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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st July, 2024

No. 13/2/135-HII(2)-2024/12049.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **53/2023** dated **29.04.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

VINEET SHARMA S/O SH. S.K. SHARMA, H. NO. 4602, A.W.H.O. COMPLEX, SECTOR 68, MOHALI (PB). (Workman)

AND

CHANDIGARH CHILD & WOMEN DEVELOPMENT CORPORATION LIMITED, TOWN HALL BUILDING, 3RD FLOOR, SECTOR 17-C, CHANDIGARH THROUGH ITS MANAGING DIRECTOR. (Management)

AWARD

1. Vineet Sharma, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 08.05.2014, Chandigarh Child & Women Development Corporation Limited advertised some posts of different natures in Times of India and Aaj Samaj newspapers including one post of Accountant-cum-Clerk on contract basis. The workman applied for the post of Accountant-cum-Clerk. The workman fulfilled the requisite qualification and experience for the post. The workman was interviewed and was appointed on the post of Accountant-cum-Clerk in Aasha Kiran, 46, Chandigarh vide letter No.848 dated 16.05.2014 for a period of one year on consolidated contractual amount of ₹ 7,000/- from 06.06.2014 to 05.06.2015 which was less than the DC rates applicable to the management. Being satisfied by the performance, the workman was given fresh contract for a further period of one year from 08.06.2015 to 07.06.2016 on a consolidated contractual amount of ₹ 7,000/- vide letter No.2913 dated 14.08.2015. The amount was less than the DC rates applicable to the management. The

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contract of the workman was reduced from one year to six months and renewed for a period of six months w.e.f. 10.06.2016 to 09.12.2016 vide letter No.963 dated 27.05.2016 for a sum of ₹ 7,000/- per month. The amount was less than the DC rates applicable to the management. The workman was offered a contract of Accountant-cum-Clerk for a further period of six months w.e.f. 13.12.2016 to 12.06.2017 on a consolidated amount of ₹ 7,000/- per month vide letter No.4408 dated 08.12.2016. The amount was less than the DC rates applicable to respondent management. The workman was offered a contract of Accountant-cum-Clerk for a further period of six months w.e.f. 15.06.2017 to 14.12.2017 on a consolidated amount of ₹ 7,000/- per month vide letter No.878 dated 31.05.2017. The workman was offered a contract of Accountant-cum-Clerk for a further period of six months w.e.f. 18.12.2017 to 17.06.2018 on a consolidated amount of ₹ 7,000/- per month vide letter No.4386 dated 18.12.2017. The workman was offered a contract of Accountant-cum-Clerk for a further period of one year w.e.f. 20.06.2018 to 19.06.2019 on a consolidated amount of ₹ 7,000/- per month vide letter No.1536 dated 18.06.2019. The workman was offered a contract of Accountant-cum-Clerk for a further period of one year w.e.f. 22.06.2019 to 21.06.2020 on a consolidated amount of ₹ 7,000/- per month vide letter No.1041 dated 31.05.2019. The workman was offered a contract of Accountant-cum-Clerk for a further period of one year w.e.f. 23.06.2020 to 22.06.2021 on a consolidated amount of ₹ 7,350/- per month vide letter No.674 dated 06.06.2020. The workman was offered a contract of Accountant-cum-Clerk for a further period of one month w.e.f. 24.06.2021 to 23.07.2021 on a consolidated amount of ₹ 15,000/- per month vide letter No.1051 dated 11.06.2021. The workman was offered a contract of Accountant-cum-Clerk for a further period of one month w.e.f. 27.07.2021 to 26.08.2021 on a consolidated amount of ₹ 15,000/- per month vide letter No.2007 dated 03.08.2021. The workman was offered a contract of Accountant-cum-Clerk for a further period of three month w.e.f. 31.08.2021 to 30.11.2021 on a consolidated amount of ₹ 15,000/- per month vide letter No.2549 dated 02.09.2021. Although there was notional brake of 1-2 days while offering fresh contract but the workman remained in the uninterrupted employment from 06.06.2014 to 30.11.2021. The workman was offered 13 times the contract for the post of Accountant-cum-Clerk during this 7 years unblemished service period. The workman remained in continuous & un-interrupted employment up to 30.11.2021 when his contract of employment was not renewed despite of the fact that the job of Accountant-cum-Clerk was of perennial nature and the said post has not been abolished and is still existing in the Corporation. Apart from the above duties, the workman was also engaged on emergency duty for COVID-19 from April, 2021 to 15th October, 2021 for 4 hours, remaining time at parent Department - SDM Office and from 16th October, 2021 to 15th November, 2021 for full time at parent department. The workman shall continue to work under this office on alternative months as per the sample schedule given above. Last employment period of the workman expired on 30.11.2021. The workman asked the reason of not renewing the contract. The workman requested the management for renewing the period of employment after 30.11.2021 vide letter dated 02.12.2021, 11.12.2021, 21.12.2021 & 03.01.2022. The workman received letter No.4560 dated 05.01.2022 on the subject non-issuance of fresh contract for further period. The workman was intimated by the Corporation that as per Clause 11 of the contract letter issued to workman vide office letter No.2549 dated 02.09.2021 the contractual offer shall automatically deemed to be terminated after the expiry of contractual period of three months which will commence from the date of joining. No formal notice or order shall be issued by the Corporation for termination of the appointee concerned after the expiry of the contract period. During the period of service the workman was issued two warnings on 07.03.2021 and 05.10.2021 alleging therein that during the present contract period the performance of the workman has not been found up to the mark and also workman was in the habit of arguing with his superiors as well as with follow colleagues unnecessarily. The workman replied the two warnings and denied the allegations leveled against him. There was no complaint against the work & conduct of the workman. His work & conduct was appreciated by all his colleges and superiors. However, the workman had requested the management a number of times for increase in wages at par with DC Rates, this could be a cause of termination. Non-renewal of contract, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. The Corporation has appointed new person in his place which is a violation of Section 25H of the ID Act. The violation of the same makes the termination void. For his reinstatement the workman served upon the management a demand notice dated 27th January, 2022. The management neither

replied the demand notice nor took the workman back on job. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Assistant Labour Commissioner-cum-Conciliation Officer intervened but the dispute could not be settled within the stipulated period. The job of Accountant-cum-Clerk is of perennial nature and it is established law that contractual employees cannot be replaced with another set of contractual employees. The action of the management is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The workman remained unemployed from the date of termination till date. Prayer is made that the workman may be reinstated with continuity of service along with full back wages, all attendant benefits and without any change in his service conditions

3. On notice, the management appeared through its authorized representative and contested the claim of the workman by filing written statement on 25.08.2023, wherein preliminary submissions are made that the present claim statement deserves to be dismissed on the ground that the workman is hiding the material facts from this Court. The facts submitted by the workman are *supprescio veri* and *exprescio falsi* to the extent that the workman has completely suppressed true and material facts in the present claim statement and as such approached this Industrial Tribunal-cum-Labour Court, U.T., Chandigarh with unclean hands. Seven Judges' Bench of Hon'ble Supreme Court in the case of Bangalore **Water Works & Sewerage Board Versus A. Rajappa, (1978)2 SCC 213** has held that "*State Government Department is not an industry.*" In the present case also, workman was working under the project viz. of Day Care & Recreation Centre for Older Persons, which is non-profitable project of Government of India. The workman was given contractual appointment for joining as Accountant-cum-Clerk in Day Care & Recreation Centre for Older Persons, Sector 46, Chandigarh, initially for one year vide letter No.848 dated 26.05.2014. As per office record, the workman had submitted the joining report on 05.06.2014 (A.N.) but he marked the attendance in the office on 06.06.2014 (F.N.). From time to time he was issued fresh contract for further periods and last contract was up to 30.11.2021. The services of the workman were governed by the contract executed between the workman and management and both the parties cannot go beyond the terms & conditions of the contract. The contract of the workman was extended from time to time from 06.06.2014 to 30.11.2021 on the basis of his performance. There was notional break for 1-2 days while offering fresh contract to the workman. During the contract for the period from 22.06.2019 to 21.06.2020, the services of the workman were not found up to the mark as he was in the habit of arguing with the superiors as well as his fellow colleagues unnecessarily and also not following the office timings regarding lunch break during his employment. In this regard, the office issued stern warning to him to be careful in future vide letter No.4709 dated 17.03.2021. On 30.06.2021, the office received a representation of the workman through the office of Hon'ble Advisor to the Administrator wherein he alleged that Sh. Mahesh Kumar, Clerk and Sh. Sandeep Rana, PA to MD forced him to recommend the loan case of an applicant without verification. The office constituted a Committee to enquire into the facts of the complaint submitted by the workman. In the meantime, his contract was going to expire on 23.07.2021. Due to non-submission of the enquiry report the committee recommended to offer him fresh contract for one month w.e.f. 27.07.2021 to 26.08.2021. The Enquiry Committee submitted the enquiry report on 29.07.2021. As per enquiry report it was stated that Sh. Sandeep Rana and Sh. Mahesh Kumar have only directed Sh. Vineet Sharma to clear his pending work files only in official capacity and allegations leveled by Sh. Vineet Sharma against Sh. Sandeep Rana and Sh. Mahesh Kumar were not justified. In this regard, the Competent Authority called the workman for personal hearing on 11.08.2021 considering the principle of natural justice. On asking about the reasons for the delayed submission of verification reports, he cited the reasons that he was performing the COVID duty under SDM South whereas he was deputed for COVID-19 duty on 05.04.2021. However, the management after taking sympathetic view offered him fresh contract w.e.f. 31.08.2021 to 30.11.2021. In view of the report submitted by the Enquiry Committee and position explained by the workman during the personal hearing, the office issued him stern warning vide letter No.3043 dated 05.10.2021 for not performing the duty with sincerity and consequently harassing the marginalized beneficiaries. Further, the fresh contract was not issued to workman for further period after 30.11.2021 on the recommendation of the evaluation committee. The present case is not maintainable as per Section 2(oo) of the ID Act as the services of the workman were governed by the terms of contract executed between workman and management. The services of the workman was not terminated by the management but fresh contract of the workman was not

offered by the management after 30.11.2021 for further period, as per condition No.11 of the last appointment letter dated 02.09.2021 given to the workman. All the conditions of the appointment letter were admitted by the workman before joining with the management. Moreover, the workman signed the contract agreement.

4. On merits, it is denied that that the workman remained in uninterrupted employment from 06.06.2014 to 30.11.2021, whereas true facts are that the workman has signed the fresh contract agreement with the management after the expiry of the previous one and that too with the notional break of 1-2 days. It is also denied that the workman had rendered 7 years unblemished service period. It is stated that the workman was issued two warning letters due to his misbehaviour and showing negligence towards his work. The management had submitted reply dated 24.05.2022 to the demand notice No.145/2022 titled as Vineet Sharma Versus Chandigarh Child & Women Development Corporation Ltd. before the Assistant Labour Commissioner-cum-Conciliation Officer. The management at no stage replaced the contractual services of the workman with another. Contents of para No.1 to 13, 16 to 19 of claim statement are admitted being matter of record. Further averments made in preliminary submissions are reiterated. Rest of the averments of claim statement are denied being wrong. Prayer is made that the claim of the workman with may be dismissed.

5. The workman filed rejoinder, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 22.09.2023 :-

1. Whether the non-renewal of period of employment of the workman after 30.11.2021 is illegal ? If so, to what effect and to what relief the workman is entitled for , if any ? OPW
2. Whether the management does not fall under the definition of 'industry' as defined under Section 2(j) of the ID Act ? OPM
3. Whether the claim of the workman is not maintainable under Section 2(oo) of the ID Act ? OPM
4. Relief.

7. In evidence, the workman examined himself as AW1 and tendered into evidence his affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'W1' to Exhibit 'W17' and Exhibit 'W13/1', Exhibit 'W14/1', Exhibit 'W15/1' and Exhibit 'M15/2' (original of Exhibit 'W13/1', Exhibit 'W14/1', Exhibit 'W15/1' & Exhibit 'W15/2' are seen and returned with direction to produce the same at the time of cross-examination).

Exhibit 'W1' is appointment letter bearing Reference No.848 dated 26.05.2014 for contractual period of 1 year.

Exhibit 'W2' is appointment letter bearing Reference No.2913 dated 14.08.2015 for contractual period of 1 year w.e.f. 08.06.2015 to 07.06.2016.

Exhibit 'W3' is appointment letter bearing Reference No.963 dated 27.05.2016 for contractual period of 6 months w.e.f. 10.06.2016 to 09.12.2016.

Exhibit 'W4' is appointment letter bearing Reference No.4408 dated 08.12.2016 for contractual period of 6 months w.e.f. 13.12.2016 to 12.06.2017.\

Exhibit 'W5' is appointment letter bearing Reference No.876 dated 31.05.2017 for contractual period of 6 months w.e.f. 15.06.2017 to 14.12.2017.

Exhibit 'W6' is appointment letter bearing Reference No.4386 dated 18.12.2017 for contractual period of 6 months w.e.f. 18.12.2017 to 17.06.2018.

Exhibit 'W7' is appointment letter bearing Reference No.1536 dated 18.06.2018 for contractual period of 1 year w.e.f. 20.06.2018 to 19.06.2019.

Exhibit 'W8' is appointment letter bearing Reference No.1041 dated 31.05.2019 for contractual period of 1 year w.e.f. 22.06.2019 to 21.06.2020.

Exhibit 'W9' is appointment letter bearing Reference No.674 dated 05.06.2020 for contractual period of 1 year w.e.f. 23.06.2020 to 22.06.2021.

Exhibit 'W10' is appointment letter bearing Reference No.1051 dated 11.06.2021 for contractual period of 1 month w.e.f. 24.06.2021 to 23.07.2021.

Exhibit 'W11' is appointment letter bearing Reference No.2007 dated 03.08.2021 for contractual period of 1 month w.e.f. 27.07.2021 to 26.08.2021.

Exhibit 'W12' is appointment letter bearing Reference No.2549 dated 02.09.2021 for contractual period of 3 months w.e.f. 31.08.2021 to 30.11.2021.

Exhibit 'W13' is application dated 02.12.2021 addressed by workman Vineet Sharma to the Managing Director Chd. Child & Women Development, Sector 17, Chandigarh on the subject of issuing contract letter, sent through registered post.

Exhibit 'W13/1' is photocopy of postal receipt dated 02.12.2021.

Exhibit 'W14' is application dated 11.12.2021 addressed from workman Vineet Sharma to the Managing Director, Chd. Child & Women Development, Sector 17, Chandigarh on the subject of seeking permission to visit department, sent through registered post.

Exhibit 'W14/1' is photocopy of postal receipt dated 11.12.2021.

Exhibit 'W15' is application dated 21.12.2021 addressed from workman Vineet Sharma to the Managing Director, Chd. Child & Women Development, Sector 17, Chandigarh on the subject of immediate issuance of contract letter with copy to the Chairman, Child & Women Development Corporation, Chandigarh, sent through registered post.

Exhibits 'W15/1' & Exhibit 'W15/2' is photocopy of two postal receipts both dated 21.12.2021.

Exhibit 'W16' is application dated 03.01.2022 addressed from workman Vineet Sharma to the Managing Director, Chd. Child & Women Development, Sector 17, Chandigarh on the subject of issuance of contract letter and seeking permission to visit office with copy to the Chairman, Child & Women Development Corporation, Chandigarh, sent through speed post.

Exhibit 'W17' is letter bearing Reference No.4560 dated 05.01.2022 issued to workman Vineet Sharma by the Company Secretary, for Managing Director, on the subject of non-issuance of fresh contract for further period.

8. On 24.01.2024 the workman closed his evidence in affirmative.

9. On the other hand, the management examined MW1 Rajni Gupta - Company Secretary, who tendered into evidence her affidavit Exhibit 'MW1/A' along with attested copies of documents Exhibit 'MW1/1' to Exhibit MW1/4'.

Exhibit 'MW1/1' is contract offer letters issued to Vineet Sharma (colly. containing pages 1 to 16).

Exhibit 'MW1/2' is warning letter bearing No.4709 dated 17.03.2021 issued to Vineet Sharma.

Exhibit 'MW1/3' is warning letter bearing No.3043 dated 05.10.2021 issued to Vineet Sharma.

Exhibit 'MW1/4' is minutes of evaluation committee meeting held on 27.08.2021.

10. Learned Law Officer for the management closed the oral evidence on 05.04.2024 and on 23.04.2024 closed the documentary evidence of the management.

11. I have heard the arguments of Learned representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise finding are as below :-

Issues No. 1 & 3 :

12. Both these issues are taken up together to avoid repetition of discussion.

13. Onus to prove issue No.1 is on the workman and onus to prove issue No.3 is on the management.

14. In support of the case, workman examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for sake of brevity. AW1 supported his oral version with the documents Exhibit 'W1' to Exhibit 'W17' and Exhibit 'W13/1', Exhibit 'W14/1', Exhibit 'W15/1' and Exhibit 'M15/2'.

15. On the other hand, the management examined MW1 Rajni Gupta - Company Secretary, who tendered her affidavit Exhibit 'MW1/A' wherein she deposed the entire material contents of the written statement, which are not reproduced in order to avoid repetition. MW1 supported his oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/4'.

16. From the oral as well documentary evidence led by the parties, admittedly the workman was appointed on the post of Accountant-cum-Clerk in Aasha Kiran, VTC-46, Chandigarh vide letter bearing No.848 dated 26.05.2014 / Exhibit 'W1' (in claim statement date of appointment incorrectly written as 16.05.2014) on consolidated salary of ₹ 7,000/- per month (fixed) during the period of contract. The initial offer of contract / Exhibit 'W1' was purely on contract basis for a period of one year. The contract was extended from time to time up to 30.11.2021. Contract dated 14.08.2015 / Exhibit 'W2' is for the period of 1 year w.e.f. 08.06.2015 to 07.06.2016 for contractual amount of ₹ 7,000/- per month (fixed) during the period of contract. Contract dated 27.05.2016 / Exhibit 'W3' is for period of 6 months w.e.f. 10.06.2016 to 09.12.2016 for contractual amount of ₹ 7,000/- per month (fixed) during the period of contract. Contract dated 08.12.2016 / Exhibit 'W4' is for period of 6 months w.e.f. 13.12.2016 to 12.06.2017 for contractual amount of ₹ 7,000/- per month. Contract dated 31.05.2017 / Exhibit 'W5' is for period of 6 months w.e.f. 15.06.2017 to 14.12.2017 for contractual amount of ₹ 7,000/- per month fixed during the period of contract. Contract dated 18.12.2017 / Exhibit 'W6' is for period of 6 months w.e.f. 18.12.2017 to 17.06.2018 for contractual amount of ₹ 7,000/- per month (fixed) during the period of contract. Contract dated 18.06.2018 / Exhibit 'W7' is for period of 1 year w.e.f. 20.06.2018 to 19.06.2019 for contractual amount of ₹ 7,000/-per month (fixed) during the period of contract. Contract dated 31.05.2019 / Exhibit 'W8' is for period of 1 year w.e.f. 22.06.2019 to 21.06.2020 for contractual period of ₹7,000/- per month (fixed) during the period of contract. Contract dated 05.06.2020 / Exhibit 'W9' is for period of 1 year w.e.f. 23.06.2020 to 22.06.2021 for consolidated amount of ₹ 7,350/- per month (fixed) during the period of contract. Contract dated 11.06.2021 / Exhibit 'W10' is for period of 1 month w.e.f. 24.06.2021 to 23.07.2021 for consolidated amount of ₹ 15,000/- per month (fixed) during the period of contract. Contract dated 03.08.2021 / Exhibit 'W11' is for period of 1 month w.e.f. 27.07.2021 to 26.08.2021 for consolidated

amount of ₹ 15,000/- per month (fixed) during the period of contract. Contract dated 02.09.2021 / Exhibit 'W12' is for period of 3 months w.e.f. 31.08.2021 to 30.11.2021 for consolidated contractual amount of ₹15,000/- per month (fixed) during the period of contract. Contract Exhibit 'W2' was offered after notional break of 12 days of previous contract Exhibit 'W1' which ended on 25.05.2014. Contract Exhibit 'W3' was offered after notional break of 3 days of previous contract Exhibit 'W2' which ended on 07.06.2016. Contract Exhibit 'W4' was offered after notional break of 3 days of previous contract Exhibit 'W3' which ended on 09.12.2016. Contract Exhibit 'W5' was offered after notional break of 3 days of previous contract Exhibit 'W4' which ended on 12.06.2017. Contract Exhibit 'W6' was offered after notional break of 3 days of previous contract Exhibit 'W5' which ended on 14.12.2017. Contract Exhibit 'W7' was offered after notional break of 3 days of previous contract Exhibit 'W6' which ended on 17.06.2018. Contract Exhibit 'W8' was offered after notional break of 2 days of previous contract Exhibit 'W7' which ended on 19.06.2019. Contract Exhibit 'W9' was offered after notional break of 1 day of previous contract Exhibit 'W8' which ended on 21.06.2020. Contract Exhibit 'W10' was offered after notional break of 1 day of previous contract Exhibit 'W9' which ended on 22.06.2021. Contract Exhibit 'W11' was offered after notional break of 3 days of previous contract Exhibit 'W10' which ended on 23.07.2021. Contract Exhibit 'W12' was offered after notional break of 4 days of previous contract Exhibit 'W11' which ended on 26.08.2021. All the notional breaks between contracts Exhibit 'W1' to Exhibit 'W12' are of 1 to 4 days from 26.05.2014 to 30.11.2021 are to be ignored as the service was continued under the same employer. Therefore, it cannot be stated to be a break in service. The workman is proved to be in continuous service of the management from the date of joining i.e. 06.06.2014 to 30.11.2021. Thus, the workman is proved to have completed continuous service of 240 days in 12 calendar months preceding termination. MW1 in cross-examination admitted as correct that the workman has continuously worked for 240 days in 12 calendar months preceding the date of completion of last contract. Admittedly, the contract of the workman was not renewed further after the expiry of last contract Exhibit 'W12' on 30.11.2021. Learned Representative for the workman referred para 18 of claim statement wherein it is pleaded that *"the claimant workman received letter No.4560 dated 5-1-2022 on the subject Non-issuance of fresh contract for further period. The claimant workman was intimated by the Corporation that as per clause-11 of contract letter issued to the claimant workman vide office letter No.2549 dated 2-9-2021~ the contractual offer shall automatically deemed to be terminated after the expiry of the contractual period of three months which will commence from the date of joining. No formal notice or order shall be issued by the Corporation for termination of the appointee concern after expiry of the contract period."* The management has not denied the aforesaid plea of the workman. In written statement in reply on merits to para 18, it is submitted that the contents of corresponding para are admitted being matter of record.

17. It is contended by Learned Representative for the workman that in para 19 of claim statement workman has pleaded that during tenure of service the workman was issued two warnings on 17.03.2021 i.e. Exhibit 'M1/2' and 05.10.2021 i.e. Exhibit 'M1/3' on the grounds that performance of the workman has not been found up to the mark and that workman was in the habit of arguing with his superiors as well as follow colleagues unnecessarily. The workman had filed reply to go through warning letters and denied the allegations levelled against him. The aforesaid contention of Learned Representative for the workman is not controverted by the management. The workman has taken specific plea to this effect in para 18 of the claim statement. The management in written statement, reply on merits to para 18 submitted that contents of corresponding para are admitted being matter of record. AW1 in cross-examination admitted as correct that warning letter dated 17.03.2021 was issued to him by the management for habit of arguing with superiors as well as follow colleagues unnecessarily and also for not following the official timings regarding lunch break. AW1 admitted as correct that again a stern warning was given vide letter No.3043 dated 05.10.2021 for not performing with sincerity and consequently harassing the marginalised beneficiaries was issued to him.

18. Learned Representative for the workman argued that non-renewal of the contract amounts to termination which is retrenchment under Section 2(o) of the ID Act. Since the management neither issued any charge sheet nor held inquiry nor paid retrenchment compensation at the time of termination, thus, the management has violated Section 25F of the ID Act. On the other hand, Learned Law Officer for the management argued that service of workman was governed by the contractor, extended between the employee

and workman and the service of the workman was never terminated after the expiry of last contract after 30.11.2021. To support his arguments Learned Law Officer referred cross-examination of AW1 wherein he has admitted as correct that as per Clause 11 of the contract the contractual offer shall automatically deemed to be terminated after the expiry of contractual period which would commence from the date of joining and no formal note or order shall be issued by the corporation for termination of service of the appointee / concerned after the expiry of contract period. Learned Law Officer further argued that apart from non-renewal of contract, on recommendation of evaluation committee / Exhibit 'MW1/4', fresh contract was not renewed. Learned Law Officer referred contents of Exhibit 'MW1/4' which are reproduced as below :-

"The case for offering fresh contract to Sh. Vineet Sharma, Accountant-cum-Clerk was placed before the committee and recommendations of the committee is given as under :

It has been informed by the Establishment Branch and Sh. Vineet Sharma S/o Sh. S.K. Sharma joined Day Care & Recreation Centre for Older Persons, Aasha Kiran Building, Sector 46, Chandigarh as Accountant-cum-Clerk on 05.06.2014. His date of birth is 03.11.1981. Presently, he is deputed in emergency COVID-19 under SDM (S), U.T, Chandigarh. He is drawing fixed remuneration of Rs.15,000/- (Fixed) per month. His contract was extended by the office from time to time on the basis of satisfactory performance. During the last contract period, the office has received a complaint of Sh. Vineet Sharma from the Hon'ble Advisor to the Administrator, Chandigarh against Sh. Mahesh Kumar, Clerk and Sh. Sandeep Rana, P.A. In this regard, the enquiry committee has submitted the report and the decision of the said report is still awaited. His contract was expired on 26.08.2021.

The Committee recommends his case for awarding of a fresh contract for three months on usual terms & conditions"

19. Learned Law Officer referred cross-examination of AW1 wherein he admitted as correct that after 30.11.2021 on recommendation of evaluation committee, fresh contract was not executed. AW1 admitted as correct that his services were never terminated by the management up to the period of last contract. It is further argued by Learned Law Officer that after completion of project work, there was no requirement for the management to enter into any fresh contract of employment with the workman. From the above referred arguments advanced by Learned Law Officer, it comes out that management has tried to justify the non-renewal of contracts on three grounds. First, the term of last contract expired on 30.11.2021, secondly the evaluation committee recommended that fresh contract will not be offered and executed and thirdly, that the project work under which the workman was appointed has completed. There is no evidence of the management that the workman was appointed under some project or that the alleged project has completed. MW1 in cross-examination stated that date care and recreation centre is still functioning. MW1 in cross-examination further stated that in the contract, it was mentioned that the workman was appointed for certain projects. MW1 admitted that in the contract the date of completion of project is not mentioned. Thus, Section 2(oo)(bb) of the ID Act is not attracted. As far as minutes of evaluation committee, Exhibit 'MW1/4' are concerned the same relates to the complaint submitted by workman Vineet Sharma and not of any complaint against Vineet Sharma. MW1 in para 5 of affidavit Exhibit 'MW1/A' stated that *"the office constituted a Committee to enquire into the facts of the complaint submitted by the workman. In the meantime, his contract was going to expire on 23.07.2021. Due to non-submission of the inquiry report the committee recommended to offer him fresh contract for one month w.e.f. 27.07.2021 to 26.08.2021.* MW1 when put to cross-examination stated that she has mentioned about the complaint on the basis of the report of the dealing assistant, copy of same is Exhibit 'MX'. MW1 denied the suggestion as wrong that as per Exhibit 'MX' the workman himself is a complainant and no complaint was either filed or pending against him. To my opinion, the aforesaid denial of MW1 to the suggestion that as per Exhibit 'MX' the workman himself is a complainant, is not acceptable because perusal of Exhibit 'MX' would prove that the office of management has received a complaint

of Shri Vineet Sharma and not complaint against Shri Vineet Sharma. Relevant portion of Exhibit 'MX' is reproduced as below :-

"During the contract period, office has received a complaint of Sh. Vineet Sharma, Accountant-cum-Clerk from the office of Hon'ble Advisor to the Administrator, Chandigarh against Sh. Sandeep Rana, PA to DSW-cum-MD and Sh. Mahesh Kumar, Clerk. In this regard, office has constituted a committee to enquire the facts of the complaints filed by Sh. Vineet Sharma. The report of enquiry committee is still awaited."

20. MW1 by mis-interpreting the document Exhibit 'MX' has tried to mislead. Thus, it is proved that there was no complaint against the work & conduct of the workman. Admittedly, the management has neither issued any charge sheet nor held domestic inquiry against the alleged misconduct of the workman. MW1 in her cross-examination stated that no charge sheet was issued against the workman. No regular inquiry was conducted against the workman. MW1 voluntarily stated that charge sheet is not required to be issued against the contractual employee and the regular inquiry is also not required to be held against the contractual employee. MW1 stated that the contract of the workman was between the workman and the Chandigarh Child & Women Development Corporation and not through any private contractor. The version of MW1 that in the case of contractual workman no charge is required to be issued or no inquiry is required to be held is not acceptable because the term "No workman" used in Section 25F of the ID Act stands for both contractual and non-contractual workman. As discussed above, admittedly the workman has completed 240 days of continuous service with the management in 12 calendar months preceding the termination (the services of the workman terminated w.e.f. 30.11.2021 on expiry of last contract dated 02.09.2021 / Exhibit 'W12'). Once the requirement of Section 25B of the ID Act is fulfilled, provisions of Section 25F is attracted. Section 25F of the ID Act is extracted herein below :-

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer until-

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

21. By Section 25F, a prohibition against retrenchment until the conditions prescribed by that Section are fulfilled is imposed. In the present case, non-renewal of contract is not on account of completion of project but as a disciplinary action recommending non-renewal of contract, which amounts to termination from service and comes under the purview of Section 25F of the ID Act. In this case, the management has failed to prove the compliance of conditions laid down under Section 25F of the ID Act, before terminating the services of the workman w.e.f. 30.11.2021 on the pretext of non-renewal of contract. MW1 in her cross-examination stated that no charge sheet was issued to the workman and no regular inquiry was conducted against him. It is neither pleaded nor proved by the management that the workman is issued one month prior notice or offered notice pay in lieu of notice period or that retrenchment compensation was paid to him. Therefore, the management is proved to have violated Section 25F of the ID Act.

22. AW1 in his cross-examination stated that he does not know if the management has appointed any fresh employee. With the aforesaid version of workman / AW1, his plea that the management has appointed new persons at his place does not stand proved.

23. In view of the discussion made above, the termination of services of the workman w.e.f. 30.11.2011 being in violation to Section 25F of the ID Act is illegal and hereby set aside. The management has failed to controvert the plea of the workman that from the date of termination till date he remained un-employed. Therefore, the workman is entitled to reinstatement with continuity of service along with 50% back wages and all consequential benefits.

24. Accordingly, issue No.1 is proved in favour of the workman and against the management. Issue No.3 is proved against the management and in favour of the workman.

Issue No. 2 :

25. Onus to prove this issue is on the management.

26. Learned Law Officer for the management argued that the department of Chandigarh Child & Women Development Corporation Ltd. is a Government Department and does not fall within the definition of 'industry' as defined under Section 2(j) of the ID Act. Therefore, this Court has no jurisdiction to try and decide the present matter.

27. To my opinion, the aforesaid argument advanced by Learned Law Officer is devoid of merits because the Government Department cannot be excluded from the definition of 'industry' unless it is proved that it is performing sovereign function of the State. In the present case, it is neither pleaded nor proved that the management is performing sovereign function of the State. Consequently, the management-department is 'industry' within the meaning of Section 2(j) of the ID Act. Since the management department falls within the definition of the 'industry' under Section 2(j) of the ID Act, thus, the workman may choose to seek remedy before the Industrial Tribunal & Labour Court.

28. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

29. In the view of foregoing finding on the issues above, the present industrial dispute is allowed. The workman is held entitled to reinstatement with continuity of service along with 50% back wages and all consequential benefits. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 29.04.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st July, 2024

No. 13/1/9528-HII(2)-2024/12051.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **82/2018** dated **30.04.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

HARJEET SINGH, VILLAGE NAGLA, P.O. DHAKOLI, DISTRICT MOHALI. (Workman)

AND

1. THE MANAGING DIRECTOR, DAINIK BHASKAR LIMITED, DWARKA SADAN, 6, PRESS COMPLEX, MP NAGAR, ZONE - I, BHOPAL, (MP).
2. THE GENERAL MANAGER, DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 11-12, SECTOR 25, CHANDIGARH.
3. THE EDITOR, THE DAINIK BHASKAR CORPORATION LIMITED, PLOT NO. 11-12, SECTOR 25, CHANDIGARH THROUGH ITS REPORTING AUTHORITY OF THE CLAIMANT. (Managements)

AWARD:-

1. Vide Endorsement No.13/1/9528-HII(2)-2018/12018 Dated 06.08.2018 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the claim application filed by Harjeet Singh (*here-in-after referred "workman"*) to The Managing Director, Dainik Bhaskar Corporation Limited & Others (*here-in-after referred "management"*) under Section 17(1) of the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (*here-in-after in short referred "Act 1955"*) in following words :-

"Whether the arrears of revision of pay to Shri Harjeet Singh, Village Nagla, P.O. Dhakoli, Distinct Mohali (Applicant/Claimant) were to be paid by 1. The Managing Director, Dainik Bhaskar Limited, Dwarka Sadan, 6, Press Complex, MP Nagar, Zone - I, Bhopal, (MP). 2. The General Manager, Dainik Bhaskar Corporation Limited, Plot No. 11-12, Sector 25, Chandigarh. 3. The Editor, the Dainik Bhaskar Corporation Limited, Plot No. 11-12, Sector 25, Chandigarh through its Reporting authority of the claimant (Respondents) according to the recommendations of the Majithia Wage Board and also as per the direction of the Hon'ble Supreme Court of India under The Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provision Act, 1955 and in compliance of the orders dated 28.04.2015, 12.01.2016, 14.03.2016, 23.08.2016 passed by the Hon'ble Supreme Court of India in CCP No.128/2015 and 129/2015 AND WP (Civil) 246/2011 dated 07.02.2014; if so, to what effect and to what relief he is entitled to, if any ?"

2. Upon notice, the workman appeared through her Representative Shri Sanjay Tangri. Briefly stated the averments of claim statement are that the respondent No. 1 - DB Corp Ltd. (*here-in-after 'management No.1'*), is India's largest newspaper group with 66 editions published in 4 languages. The major newspapers published by the group are Dainik Bhaskar (Hindi daily), Divya Bhaskar (Gujarati daily), Dainik Divya Marathi (Marathi daily), Saurashtra Samachar, DB Post (English daily) and DB Star. The

claimant (*here-in-after 'workman'*), a non working journalist, had joined the management on 07.09.2004 and working as Office Assistant (Administration). The workman had been performing his duties with utmost sincerity and devotion, dedicating 10-11 hours on duty regularly and regardless of his post. The workman had been performing many duties like preparation of advertisement, news, special editions etc. The hard work & efforts put in by the workman had been duly appreciated by the management. The Government of India has accepted the recommendations of the Majithia Wage Board on 25.10.2011, for revision of wages and allowances of employees in newspaper establishments and news agencies and notified vide S.O. No.2532(E) dated 11.11.2011 in the Gazette of India. As per the recommendations of the Majithia Wage Board Award, the management falls under Class - I of the Newspaper Establishment as its annual turnover is ₹ 1,000/- crore and above. The Hon'ble Supreme Court of India in the matter of ABP Pvt. Ltd. & Another Versus The Union of India & Others reported as 2014(3) SCC 327 has rejected various challans by management of various newspapers to the Majithia Wage Board recommendations its judgment, the Hon'ble Supreme Court held that the wages as revised/determined shall be payable from 11.11.2011 when the Government of India notified the recommendations of the Majithia Wage Boards. All the arrears up to March, 2014 shall be paid to all eligible persons in four equal installments within a period of one year from today and continue to pay the revised wages from April, 2014 onwards. The workman has been requesting the managements for balance payment but without any fruitful results. The managements have not paid arrears to the workman till date despite the fact that the recommendations of the Majithia have been upheld by the Hon'ble Supreme Court of India and specific directions have been given by the Hon'ble Supreme Court of India for the implementation of the Majithia Wage Board. As per the recommendation of the Majithia Wage Board, the applicant is entitled to ₹ 19.12 Lacs i.e. arrears from 11.11.2011 to 31.05.2018, ₹ 15.13 Lacs as interest on arrears @18% per annum, ₹ 1.66 Lacs as interim relief from 01.01.2008 to 10.11.2011 and ₹ 53,268/- as LTA total amounting to ₹ 36.44 Lacs. The detailed statement of account is attached with the claim statement. Non-payment of arrears thereof to the applicant is contemptuous, illegal, mala-fide, in utter violation of judgment passed by the Hon'ble Supreme Court of India. The management in order to victimize and harass the workman has started resorting to unfair labour practices in as much as when the workman applied for a week's leave on 21.06.2018 the management rejected the same and on the same day sent an email to the workman at night that he has been transferred to Surat (Gujarat) with immediate effect. The said transfer is nothing but a mala-fide exercise of power with an oblique motive to punish the workman and cause injustice and inconvenience to him for approaching the Court of Law and there are no other reasons for the same. The management has resorted to such unfair labour practices in case of other similar employees, who have also approached the Court of Law, seeking release of the arrears as per Majithia Wage Board Award. The Hon'ble Supreme Court of India in Contempt Petition (C) No.411/2014 in WP (Civil) No. 246/2011 in para No. 28 of the judgment has held as under :-

"Insofar as the writ petitions seeking interference with transfer/termination, as the case may be, are concerned, it appears that the same are relatable to service conditions of the concerned writ petitioners. Adjudication of such question in the exercise of High prerogative writ jurisdiction of this court under Article 32 of the constitution would not only be unjustified by such questions should be left for determination before the appropriate authority either under the act or under cognate provisions of law (Industrial Disputes Act, 1947 etc.) as the case may be."

Due to such an arbitrary, illegal, unjust and mala-fide action, rather inaction on the part of the management the workman has suffered immeasurable mental agonies, financial hardship and physical harassment, which deserves to be compensated in terms of money. The managements also deserve to be saddled with heavy and extraordinary costs for resorting to unfair labour practice. Prayer is made that :-

- a) The managements may be directed to pay a balance arrears to the workman amounting to ₹36.44 Lacs, as per statement of account attached with the claim statement, till the date of realization;
- b) Operation of the transfer order dated 21.06.2018 may be stayed.

- c) The management may be directed not to initiate any inquiry / proceedings against the workman.
- e) The managements may be directed to produce all the records relevant to the case.
- f) The managements may be burden with heavy costs and award compensation to the tune of ₹ 25.000/- to the workman for mental agonies, physical harassment and financial hardship;
- g) Cost of this claim may be allowed;
- h) To pass such other orders, directions and grant such other relief in favour of the workman, as deemed fit, and proper in the facts and circumstances of the case by this Hon'ble Court.

3. On notice, initially management No.2&3 appeared through Shri Bijender Sharma - Representative, who filed memo of appearance on 17.09.2018 and later filed authority letter on 12.12.2018 on behalf of management No.1 to 3. Management No.1 to 3 contested the claim statement by filing joint written statement wherein preliminary objections are raised on the ground that the applicant-workman was appointed as an Office Assistant on 07.09.2004 and he was promoted and currently working as Unit Attendant. In accordance with exceptions under Section 2(f) of the Act 1955, he would fall under the supervisory / managerial capacity as he had a team working under him. Further he does not fall under the definition of working journalists and non-working journalists by nature of his designation as well as nature of work, hence he is not entitled for recommendations of the Majithia Wage Board Recommendations. The applicant-workman does not fall under the definition of 'workman' as per Section 2(s) of the Industrial Disputes Act, 1947 (*here-in-after in referred as 'ID Act'*). The applicant-workman was transferred to Daini Bhaskar, Surat Establishment on 21.06.2018, however, the applicant-workman failed to join at Surat. The respondent (*here-in-after 'management'*) sent a letter dated 28.06.2018 stating that due to the misdemeanor of the applicant-workman, the work at the Surat Office was getting suffered, to which the applicant-workman did not provide any response or reason for not joining the office. The management sent another reminder dated 05.07.2018 directing the applicant-workman to join the Bureau Office, Amreli within 72 hours of the receipt of the letter with written explanation otherwise it will be presumed willfully absconding from the duties and a disciplinary action would be taken. The applicant-workman did not reply or respond to the said reminder and continued to abscond from his duties. After due process of letters a charge sheet dated 12.07.2018 was issued against the applicant-workman and several inquiry proceedings were held wherein the applicant-workman was provided with the opportunity to provide the management with the reasons for his absence from duties. However, the applicant-workman failed to present himself in any inquiry proceedings that were held before the Inquiry Officer and consequently, the Inquiry Officer was forced to terminate the employment of the applicant-workman owing to his deliberate absence and further attempting to disrupt the disciplinary framework of the organisation. Last employment place was Surat, Gujarat. The applicant-workman ought to have filed his claims in Labour Court, Surat, Gujarat and not before this Labour Court, Chandigarh. The Labour Court in Surat, Gujarat would have jurisdiction to entertain the claim. The claim statement is liable to be dismissed on account of mis-joinder of necessary party as the alleged service rendered by the applicant-workman with the answering management i.e. Assistant General Manager / Senior Manger, HR (who has not been impleaded as party in the present claim statement). The procedure under the scheme of the Act, aggrieved employees seeking to recover any amount due under the Act is required to first move an application before the State government. As per Rule 36 of the Act, such an application is required to be made in prescribed Form 'C' addressed to the Secretary to the State Government, along with the details of the amount claimed, preceded by a 15 days prior notice regarding payment to the concerned newspaper establishment. In this case, no such application along with the details of the amount claimed, much less in the prescribed format was made to the Secretary of the State Government. No 15 days prior notice was issued by claimant-workman to the management as required under Rule 36 of the Act. Thus, in the absence of fulfilling the conditions precedent for initiating action under Section 17 of the Act, legally no proceedings could have been initiated at the instance of the management against the applicant-workman. Hence, the proceeding in question is void ab-initio. The claim statement is hopelessly time barred. It is well settled law that a civil suit does not lie after the expiry of 3 years of the cause of action. The employees who have signed 20(J) of the Majithia Wage Board recommendations of their own account are not

entitled for Majithia Wage Board recommendations and henceforth the claim is liable to be dismissed. The management has fully complied with the provisions of the Majithia Wage Board issued by the Central Government under notification dated 11.11.2011. Mr. Harjeet Singh had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant-workman has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board at his own voluntarily. Now nothing is payable to the claimant as he had already received wages according to the option opted by him in para 20(j), which is reproduced as below :-

"20(j) The revised pay scales shall become applicable to all employees with effect from 1st July, 2010. However, if an employee within three weeks from the date of publication of Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for retaining his existing pay scale and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments."

The above mentioned para 20(j) is integral part of Majithia Wage Board recommendations and has full force of law. Answering management has fully paid to applicant as per para 20(j). The claimant had never raised any question nor made any complaint to the management or to the competent authority regarding the undertaking which he had given within specified time of three weeks. Now after lapse of long time he is raising dispute of non-payment of wages as per Majithia Wage Board recommendations which is simply afterthought, illegal and baseless. No complaint can be entertained after passing almost eight years of lapse of prescribed period. On question of validity of 20(j), from 1955 to 2011 six Wage Boards were constituted i.e.

2nd May, 1956 - Dvetia Wage Board (notified on 1957) but Hon'ble Supreme Court has quashed the recommendations.

12th November, 1963 - Sindhiya Wage Board (notified on 27th November, 1967) but the same was quashed by the Hon'ble Supreme Court.

11th June, 1975 - Palekar Wage Board (notified on 26th November, 1980) but the same was implemented as per Clause 10 of the Wage Board.

17th July, 1985 - Bachawat Wage Board (notified on 31st August, 1989).

9th September, 1994 - Manishna Wage Board constituted on 5th December, 2000.

24th May, 2007 - Majithia Wage Board constituted on 24th May, 2007 (notified on 11.11.2011)

4. It is further stated that since year 1956 various wage Boards have been constituted from time to time and the option has been given to the employee to opt for the payment of existing pay scale and existing emoluments in all these aforesaid various wage Boards. When the Majithia Wage Board was finally notified on 11.11.2011, most of the employees opted to sign 20(j) as per their own accord and hence decided to exercise the option for retaining the existing pay scale and existing emoluments. The employees were informed about the option for 20(j) of the Majithia Wage Board recommendations for payment of existing pay scale and existing emoluments by affixing notice on the notice board of the company. The employees have themselves opted to sign 20(j) of the Majithia Wage Board recommendations on their own accord and free will. The allegations that the employees signed 20(j) under the coercion are totally false and baseless. The plea is beyond limitation. The plea of coercion is tenable as the same is foul of principles laid down under Order VI Rule 4 CPC. The employer has paid the wages as per Section 20(j) of the Majithia Wage Board recommendations and no alleged amount of ₹ 36,44,280.41 is due. The claimant-workman has already received his full wages as per para 20(j) of the notification dated 11.11.2011 and para 20(j) being part of the said notification has full force of law and cannot be ignored as provided in Majithia Wage Board recommendations. On this ground also nothing is due. Hence, claim statement is liable to be rejected on the ground that nothing is due of claimant-workman against the organisation.

5. Further on merits, it is stated that the DB Corp. Ltd. is a group of business including digital media, MY FM, textile, power, property, print media, even management etc. Further, the DB Corp Ltd. is involving the business of marketing and publishing of newspaper in Chandigarh, and the printing press for publishing the newspaper is situated at Sirhind, Punjab. It is denied that the applicant-workman has always worked with honesty, sincerity, devotion and hard-work and diligence to the entire satisfaction of his superiors, sincerity and devotion while following the all the rules and guidelines. It is further denied that there has been never been any complaint against the applicant-workman. It is submitted that the applicant-workman was dismissed from his service due to his arrogant and non-devotion behaviour. The applicant-workman never worked more hour other than permitted under the Act. The applicant-workman working for the preparation of advertisement which were supplied to him by his team and the applicant-workman was always used to sent the same to the advertising agencies. The applicant-workman never requested the management for releasing the arrears of balance payments. The managements always honour the direction of the Hon'ble Apex Court. The applicant-workman has approached the management to submit declaration under 20(j) in November 2011 thereafter the applicant-workman neither requested the management through personal visit nor through Form 'C' under Rule 36 of the Act 1955. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with exemplary costs, in the interest of justice.

6. The workman filed replication, wherein the contents of written statement except the admitted facts of the claim statement, are denied as wrong and the averments of the statement of claim are reiterated.

7. From the pleadings of the parties, following issues were framed vide order dated 03.07.2019 :-

1. Whether the arrears of revision of pay to Shri Harjeet Singh were to be paid by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether this Court has no territorial jurisdiction to entertain the claim of Shri Harjeet Singh ? OPM
3. Whether Shri Harjeet Singh does not fall under the definition of 'workman' as defined under Section 2(s) of the ID Act ? OPM
4. Whether the claim of Shri Harjeet Singh is bad on the ground of mis-joinder of necessary party ? OPM
5. Whether the claim of Shri Harjeet Singh is time barred ? OPM
6. Whether the claim of Shri Harjeet Singh is not maintainable under the provisions of Section 17 of the Working Journalists & Other Newspaper Employees (Condition of Services) and Miscellaneous Provisions Act, 1955 ? OPM
7. Relief.

8. In evidence, workman Harjeet Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'AW1' to Exhibit 'AW5'.

Exhibit 'AW1' is copy of identity card of Harjeet Singh having employee Code No.11900 issued by Dainik Bhaskar.

Exhibit 'AW2' is copy of the pay slip for the month of January, 2018 issued by DB Corp. Ltd. to workman Harjeet Singh.

Exhibit 'AW3' is copy of the pay slip for the month of February, 2018 issued by DB Corp. Ltd. to workman Harjeet Singh.

Exhibit 'AW4' (colly4 pages) is copies of letters whereby annual compensation / CTC was granted to the workman Harjeet Singh.

Exhibit 'AW5' is copy of the details of calculation accompanied with calculation sheet of estimated gross salary as per Majithia Wage Board relating to workman Harjeet Singh.

Exhibit 'AW6' is copy of transfer letter dated 21.06.2018 issued to Harjeet Singh.

9. During cross-examination of AW1 declaration dated 15.11.2011 was put to the witness by the management vide Exhibit 'M1'.

10. The workman examined AW2 Dhruv Gupta - Chartered Accountant, who tendered his affidavit Exhibit 'AW2/A' along with documents Exhibit 'AW2/1' to Exhibit 'AW2/17'.

Exhibit 'AW2/1' is copy of the pay slip for the month of June, 2013 issued by DB Corp. Ltd. related to workman Harjeet Singh.

Exhibit 'AW2/2' is copy of the pay slip for the month of August, 2015 issued by DB Corp. Ltd. related to workman Harjeet Singh.

Exhibit 'AW2/3' is copy of the pay slip for the month of September, 2017 issued by DB Corp. Ltd. related to workman Harjeet Singh.

Exhibit 'AW2/4' is copy of the pay slip for the month of October, 2017 issued by DB Corp. Ltd. related to workman Harjeet Singh.

Exhibit 'AW2/5' is copy of the pay slip for the month of February, 2018 issued by DB Corp. Ltd. related to workman Harjeet Singh.

Exhibit 'AW2/6' is copy of letter bearing No.Emp id : CHD00951 dated 25.05.2012 whereby CTC of the workman Harjeet Singh was revised w.e.f. 01.04.2012.

Exhibit 'AW2/7' is copy of letter bearing No.Emp_id:11900 dated 29.07.2013 whereby CTC of the workman Harjeet Singh was revised w.e.f. 01.04.2013.

Exhibit 'AW2/8' is copy of letter bearing No.DBCL/HR/11900-COD0336/2015 dated 29.07.2015 whereby workman Harjeet Singh was promoted as Office Assistant and his annual compensation was revised w.e.f. 01.04.2015.

Exhibit 'AW2/9' is copy of letter bearing No.DBCL/HR/11900/2016 dated 31.05.2016 whereby annual compensation of the workman Harjeet Singh was revised w.e.f. 01.04.2016.

Exhibit 'AW2/10' is copy of letter bearing No.DBCL/HR/11900/2017 dated 30.08.2017 whereby annual compensation of the workman Harjeet Singh was revised w.e.f. 01.04.2017.

Exhibit 'AW2/11' is copy of compensation details of the workman Harjeet Singh revised w.e.f. 01.04.2016.

Exhibit 'AW2/12' is copy of compensation details of the workman Harjeet Singh revised w.e.f. 01.04.2017.

Exhibit 'AW2/13' is copy of compensation details of the workman Harjeet Singh revised w.e.f. 01.04.2015.

Exhibit 'AW2/14' is copy of the details of calculation accompanied with calculation sheet of estimated gross salary as per Majithia Wage Board relating to workman Harjeet Singh.

Exhibit 'AW2/15' to Exhibit 'AW2/17' are copies of balance sheet of DB Corp. Ltd. for the period 2007-08, 2008-09 and 2009-10 respectively obtained from the website of the Ministry of Corporate Affairs, Govt. of India.

11. On 10.10.2023 Learned Representative for the workman evidence of the workman in affirmative.

12. On the other hand, management examined MW1 Avdhesh Gaur - Assistant Manager, HR Admin, O/o Dainik Bhaskar, Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'M1' to Exhibit 'M3'.

Exhibit 'M1' is authority letter dated 11.12.2023 issued by DB Corp. Ltd. in favour of Avdhesh Gaur.

Exhibit 'M2' is copy of identity card of Avdhesh Gaur.

Exhibit 'M3' is copy of declaration form dated 15.11.2011 (original of Exhibit 'M3' seen and returned).

13. It is pertinent to mention here that Exhibit 'M1' is numbered twice i.e. declaration dated 15.11.2011 put in cross-examination to AW1 is numbered as Exhibit 'M1' and authority letter dated 11.12.2023 tendered by MW1 in his examination-in-chief as Exhibit 'M1'. In order to avoid any ambiguity, authority letter dated 11.12.2023 is renumbered and hereafter referred as Exhibit 'M1/A'.

14. On 29.04.2024, Learned Representative for the management closed evidence.

15. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 & 3 :

16. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

17. Onus to prove issue No.1 is on the workman and onus to prove issue No.3 is on the management.

18. In order to prove the entitlement of the workman to the arrears of pay on the basis of Majithia Wage Board recommendations notified on 11.11.2011 by the Government of India, workman Harjeet Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed that the respondent D.B. Corp. falls in Class - II establishment. The gross revenue of the D.B. Corp. for accounting year 2007-08 was ₹ 850.58 crore, for the year 2008-09 ₹ 932.43 crore and for the year 2009-10 ₹ 1,026.13 crore. The average revenue of D.B. Corp. for these 3 years is said to be ₹ 936.38 crore. Further averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'AW1' to Exhibit 'AW5'.

19. In order to prove the calculation of the amount due from the management, the workman examined AW2 Dhruv Gupta - Chartered Accountant, who vide his affidavit Exhibit 'AW2/A' deposed that he is a Chartered Accountant by Profession and Partner of the DGR & Associates firm. DGR & Associates is a Firm of Chartered Accountants having its Office at 66, Venkateshwar Colony, New Sanganer Road, Sodala, Jaipur, Rajasthan - 302019. The claimant Harjeet Singh had approached him and told him that he was working with DB Corp Ltd. and he wanted to claim the arrears due from the respondents as per the Majithia Wage Board Award. The claimant-workman asked him to prepare a report and a chart of arrears payable to him as per revised Scales of Wages recommended by the Majithia Wage Board and as per Notification dated 11.11.2011 issued by the Govt. of India. The claimant-workman supplied him salary slips, appraisal letters, compensation details and copy of Govt. Notification dated 11/11/2011 and other details. He further deposed that he had carefully gone through the service conditions set out in the appointment order, promotion orders his total annual wages and monthly wages, pay slips and appraisal letters and other details provided to him by the claimant-workman and have also carefully gone through the Govt. Notification dated 11/11/2011 and the Recommendations of the Majithia Wage Board Award and after considering the above documents and provisions made in the Govt. of India Notification dated 11/11/2011, he has prepared his report and chart of calculations of Estimated Gross Salary/Wages Payable to the claimant-workman/employee along with interim relief as per the Majithia Wage Board. The calculations of Revised Scale of Wages have been made by him as per the directions and guidelines mentioned in Clause No. 3 to 22 of the Notification dated 11/11/2011. The respondent-management is running the Newspaper Establishments across the country under the name Dainik

Bhaskar Corporation Ltd. i.e. DB.Corp. Ltd.) and having its Registered Office at Plot No. 280, Savkhej, Gandhi Nagar Highway, Near YMCA Club, Ahmedabad, Gujrat-380051 and having its Newspaper Establishment Unit at Plot No. 11-12, Dakshin Marg Sector 25, Chandigarh-160036. The Newspaper Establishments are classified in Class I to VIII on the basis of their gross revenue and same are stated at Clause No. 6 in Section-II at Page No. 13 of the Wage Board Recommendations of the Govt. Notification dated 11/11/2011. The balance sheets for the said period i.e. 2007-08, 2008-09 & 2009-10 as obtained from the website of the Ministry of Corporate Affairs, Govt. of India are annexed. He further deposed that the wages payable to the claimant-workman as per Revised Pay Scale from 11.11.2011 to 31.05.2018 comes ₹ 38,91,446/-. The claimant-workman has earned wages from 11.11.2011 to 31.05.2018 of ₹ 7,32,935/-. The arrears of wages (i.e. Difference excluding interest) to be received by the claimant-workman comes to ₹ 31,58,510/-. As per his knowledge the amount of arrears of ₹ 31,58,510/- has not been paid to the claimant-workman, hence he has made calculations of interest @ 18% per annum compounding quarterly from 11.11.2011 till 31.05.2018 which comes to ₹ 60,39,270/- including interim relief. In order to prove the basis of the calculation AW2 placed on record the documents Exhibit 'AW2/1' to Exhibit 'AW2/17'.

20. On the other hand, to controvert the evidence led by the workman, the management examined MW1 Avdhesh Gaur - Assistant Manager (HR & Admin) of DB Corp. Ltd., who vide his affidavit Exhibit 'MW1/A' deposed that he is working as Assistant Manager (HR & Admin) with the respondents and has been authorised by the respondent to depose on its behalf in the above said case before this Court. He is well conversant with the facts of the present case. He further deposed that DB Corp. Ltd. is a group of business including textile, MY FM, Digital Media, Real estate, power, denim. As per Majithia Wage Board recommendation only the business of newspaper establishment i.e. circulation and advertisement of newspaper shall be counted and all the units have independent existence and the accounts of each unit are being prepared by that unit. He further deposed that the claimant-workman does not fall under the definition of 'workman' as per Section 2(s) (ii to iv) of the ID Act. The claimant had also failed to claim himself as workman as per the provisions of the ID Act. As per nature as well as status of post Senior Management Associate, the claimant-workman does not fall within the definition of 'workman' as per Section 2 of the ID Act. He further deposed that the employees who have signed 20(j) of the Majithia Wage Board Recommendations on their own accord are not entitled for Majithia Wage Board Recommendations and henceforth the claim is liable to be dismissed. The claim made in the instant case by the applicant is not maintainable under the provisions of Section 17 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 as no amount is due and further the amount as claimed by the applicant is based on non-existing right. The employees were informed about the Majithia Wage Board recommendations and option for 20(j) of the Majithia Wage Board recommendations for payment of existing pay scale and existing emolument by affixing copy of Majithia Wage Board recommendations and notice on the notice board of the company. The employees have themselves opted to sign 20(j) of the Majithia Wage Recommendations on their own accord and free will after well understanding of the Majithia Wage Board recommendations. The respondent-management has fully complied with the provision of Majithia Wage Board issued by the Central Government under notification dated 11.11/2011. The claimant-workman had already received the wages as per para 20(j) of the Majithia Wage Board recommendations. The claimant-workman has chosen / opted to retain his existing wages and existing emoluments as per para 20(j) of the Majithia Wage Board at his own voluntarily by signing a declaration dated 15.11.2011 and after signing the declaration, now nothing is payable to the applicant as he has already received wages according to option opted by him of para 20(j) and opted to retain his current salary and emoluments at that time. All the employees working have given their signatures on option letter as per their will and submitted it to the management. MW1 supported his oral version with documents Exhibit 'M1/A', Exhibit 'MW2' and Exhibit 'M3'.

21. It is undeniable fact of parties that the services of the workman were governed under the Working Journalists & Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955. From the oral as well documentary evidence led by the parties and from the pleadings, it emerges that admittedly the workman was appointed as Office Assistant (Administration) and he was promoted as Unit Attendant. Learned Representative for the workman argued that though the workman was promoted as Unit Attendant but he kept

on performing his duties as Office Assistant only without there being any change in the nature of work or his duties. On the other hand, Learned Representative for the management argued that the applicant-workman was performing his duties under the supervisory capacity as such the workman ceased to be a 'workman' as per the definition under Section 2(s) of the ID Act. To my opinion, the argument advanced by Learned Representative for the management that claimant-workman does not fall within the definition of 'workman' as defined in Section 2(s) of the ID Act is devoid of merit because as per the judgment of Hon'ble Apex Court titled as **Anand Regional Coop. Oil Seedsgrowers' Union Limited Versus Shaileshkumar Harshadbhai Shah, reported in 2006 SCC (L&S) 1486**, referred by Learned Representative for the workman, which is applicable to the facts of the present case to an extent, mere designation of the post held by an employee is not the only determining factor as to whether he is a 'workman' as defined under Section 2(s) of the ID Act or not. Main and dominant nature of duties performed by the employee would be the determining factor. What are the prime duties he performs is to be seen. As already discussed above, workman has alleged that he was performing duties as Office Assistant. On the other hand, the management did not elaborate as to what kind of administrative, managerial or supervisory duties were performed by the workman. It is neither pleaded nor proved into evidence that the claimant-workman had the power to make temporary appointments, grant leave and initiate disciplinary proceedings etc. Thus, it is concluded that the workman was not performing any administrative, managerial or supervisory duties and falls within the definition of 'workman' as defined under Section 2(s) of the ID Act.

22. Learned Representative for the workman argued that in view of the Majithia Wage Board recommendations notified on 11.11.2011, claimant-workman is entitled to arrears of pay for the period 11.11.2011 to 31.05.2018 as detailed in the calculation sheet Exhibit 'AW2/14' prepared by Chartered Account Dhruv Gupta examined as AW2. On the other hand, Learned Representative for the management argued that the workman has voluntarily exercised option to retain his existing pay scale and existing emoluments under para 20(j) of Majithia Wage Board recommendations by signing a declaration dated 15.11.2011 / Exhibit 'M3'. The management has fully paid wages to the claimant-workman as para 20(j) of Majithia Wage Board recommendations. Moreover, the claimant-workman had never raised any question nor made any complaint to the management or to any competent authority regarding the undertaking given by him in the form of declaration Exhibit 'M3'. To my opinion, though the workman identify his signature on declaration dated 15.11.2011 Exhibit 'M1' / Exhibit 'M3' but it is not proved by the management that before obtaining options under para 20(j) of Majithia Wage Board recommendations from its employees, any public notice was affixed on the notice board to inform or appraise the employees to submit a declaration. Moreover, in para 11 of replication, in reply to preliminary objections the claimant-workman has pleaded that he never chose / opted to retain his existing wages and existing emoluments as per para 20(j). The claimant-workman further pleaded that the alleged undertaking was got signed by the management under pressure and without disclosing the contents of the same to the claimant. The said undertaking is totally involuntarily and in any case the wages fixed by the wage board will prevail over any such undertaking. Learned Representative for the workman referred the unreported **judgment dated 22.04.2024 passed by the Hon'ble High Court of Madhya Pradesh at Jabalpur in Misc. Petition No.5093 of 2022 between Dainik Bhaskar and the State of Madhya Pradesh & Others**. In the said judgment the claimant-workman is impleaded as respondent and Dainik Bhaskar through its authorised Representative is petitioner. In para 15, 16 and 26 of the judgment (supra) it has been held as below :-

"15. Thus, the burden that the declaration was given voluntarily by the respondent is upon the petitioner. Although it is the stand of the Petitioner that a public notice was affixed on the notice board that the employees has to submit a declaration in the light of clause 20(j) of Majithia Wage Board, but the Petitioner has miserably failed to prove that the employees were informed about the recommendations of the Majithia Wage Board and only after understanding the same, the respondent had voluntarily signed the declaration form. There is nothing on record that even the recommendations of the Majithia Wage Board were also affixed on the notice board, so that the respondents and others can go through the same. The petitioner being the employer was undoubtedly in a dominating

position as it has every power to terminate the service or regulate the service conditions of the respondent.

16. *Under these circumstances, this Court is of the considered opinion, that the Petitioner has miserably failed to discharge its burden to prove that the respondent had voluntarily executed the declaration under clause 20(j) of the Majthia Wage Board.*

.....

26. *Similarly, if an employer pays less than the Minimum Wages, then such an act of the employer would be punishable under Section 22 of the Minimum Wages Act. Thus, if the contention of the Petitioner, that if a declaration has been made by an employee under Clause 20(j) of Recommendations of Majthia Wage Board and agrees to work on a lesser pay than what was recommended by the Majthia Wage Board is accepted, then it would amount to permitting the employer to pay lesser wages than the Minimum Wages. Therefore, what is otherwise an offence and violative of Art. 23 of the Constitution of India, cannot be legalize under Clause 20(j) of recommendations Majithia Wage Board. Further any interpretation which leads to legalize an act which otherwise is an offence should always be avoided. Thus, only that declaration can be said to be a valid declaration under Clause 20(j) of recommendations of Majthia Wage Board if it is in favour of the employee and not detrimental to his interest. Therefore, the contention of the petitioner that the respondent had given a declaration thereby expressing his satisfaction over the pay scale which was given to him cannot be accepted, and it cannot be held that the respondent was estopped from claiming higher pay scale as recommended by Majithia Wage Board."*

23. *Learned Representative for the workman referred another unreported judgment dated 27.04.2023 of Hon'ble High Court of Uttra Pradesh at Lucknow passed in Writ-C No.10419 of 2023 titled as M/s Jagran Prakashan Limited Versus Sh. Amar Kumar Singh & 3 Others and Writ-C No.23212 of 2021 titled as M/s Jagran Prakashan Limited Versus Krishan Lal & 4 Others, wherein in para 31, 33 and 35, it has been held as below :-*

- "31. *It is well settled that the Act, a piece of socio beneficial legislation enacted with a view to give reasonable working conditions to the employees of the newspaper establishment, needs to be interpreted in a manner, which leads to achieve the purpose for which the Act was enacted. The provisions of Clause 20(J) read with Section 13 and 16 have to be interpreted harmoniously to ensure that none of the provisions are rendered otiose.*

.....

33. *The argument of the counsel for the petitioner in the light of the provisions of Clause 20(J), if accepted, would render the entire Act inapplicable and if the said argument is accepted, the same would be in clear violation of the mandate of Section 12, 13, 13-C, 13-D and Section 16 of the Act.*

.....

35. *It is further inconceivable as to why the employee would agitate for the wages and emoluments by instituting proceedings under Section 17 if he was getting more amounts than what was prescribed by the wage board, it is equally inconceivable as to why any newspaper establishment would contest such proceedings if they felt that the wages and emoluments paid to an employee under an agreement are more than the recommendations of the board."*

24. The above referred judgments are applicable to the facts of the present case to an extent and accordingly the declaration under Clause 20(j) of Majithia Wage Board recommendations / Exhibit 'M1' / Exhibit 'M3' cannot be said to be a valid declaration and it does not operate as a bar to the applicant-workman to claim higher pay scale as recommended by Majithia Wage Board.

25. Learned Representative for the management argued that the claimant-workman has failed to prove into evidence the income of the DB Corp. Limited from the circulation and advertisement of the newspaper. The gross income of DB Corp. Limited from its other business of textile, My FM, digital media, real estate, power, event management and denim etc. cannot be taken into consideration. In the absence of independent income of the management from circulation and advertisement of the newspaper, the calculation sheet based upon gross revenue of DB Corp. i.e. balance sheet Exhibit 'AW2/15' to Exhibit 'AW2/17' cannot be considered. To my opinion, Dainik Bhaskar is responsible to maintain the record of income from circulation and advertisement of newspaper. The claimant-workman is not supposed to be in possession of any record of income and expenditure or balance sheet of the income of Dainik Bhaskar from circulation and advertisement of newspaper. MW1 when put to cross-examination stated that he cannot tell in how many cities DB is being published. He cannot tell the gross revenue of DB Corp. from advertisement, circulation, MyFM, real estate, power and denim. In the present case, the workman filed an application for issuing direction to the management to produce the record i.e. i) complete service record of claimant-workman; ii) balance sheet of newspaper DB Corp. Ltd. for the financial years 2007-08, 2008-09 and 2009-10. The management contested the application by filing written reply. Vide order dated 05.06.2023 passed by this Court direction was issued to the management to produce complete service record of the workman. As far as balance sheet of M/s DB Corp. Ltd. for the year financial year 2007-08, 2008-09 and 2009-10 is concerned, the management was directed to produce the same, failing which to file an affidavit for its non-possession so that the workman may prove the same by leading secondary evidence subject to just & legal exceptions. On 02.08.2023 Shri Avdhesh Gaur - Assistant Manager (HR & Admin) placed on record his sworn-in affidavit accompanied with photocopy of balance sheet as on 31.03.2008, 31.03.2009 and 31.03.2010 of Dainik Bhaskar, Chandigarh. In the affidavit it is deposed that the file containing the service record of claimant-workman has been misplaced and the same is not traceable at this stage. It is further deposed that respondents are in the process of re-constructing the service record of the claimant and shall submit the same as soon as the file is reconstructed by the respondent. The balance sheet of the newspaper DB Corp. for the financial year 2007-08, 2008-09 and 2009-10 is maintained at the Head Office situated at Bhopal, M.P. and the same can be summoned from Head Office at Bhopal. In this case, till the conclusion of arguments the management failed to produce the alleged reconstructed service record of the claimant and failed to comply with the direction issued vide order dated 26.04.2021 to produce the balance sheet of newspaper DB Corp. for the financial year 2007-08, 2008-09 and 2009-10. Under the circumstances mentioned above, due to non-production of record adverse inference stands drawn against the management. The management has failed to controvert that the revenue of the management of Dainik Bhaskar Newspaper is more than ₹ 1,000 Crores.

26. In view of the discussed made above, the claimant-workman falls within the definition of 'workman' as defined under Section 2(s) of the ID Act and is entitled to recover arrears of difference of pay for the period from 11.11.2011 to 31.05.2018.

27. Accordingly, issue No.1 is decided in favour of the claimant-workman and against the management. Issue No.3 is decided against the trialement and in favour of the claimant-workman.

Issue No. 2 :

28. Onus to prove this issue is on the management.

29. It is undeniable fact that the workman joined service with the management on 07.09.2014 and was working as Office Assistant in the Editorial Department as mentioned in his identity card Exhibit 'AW1' issued by Office of Dainik Bhaskar, Plot No.11-12, Sector 25, Chandigarh. Furthermore, as per the pay slips Exhibit 'AW2', Exhibit 'AW3' and annual appraisals Exhibit 'AW4' the workman was performing the duties of Office Assistant in Editorial Department at Chandigarh. Similar is the designation and place of posting of the workman in pay slips Exhibit 'AW2/3' to Exhibit 'AW2/5', letter dated 29.07.2013 / Exhibit 'AW2/7' and annual appraisals Exhibit 'AW2/8' to Exhibit 'AW2/10' as well as in compensation detail in Annexure 'A' vide Exhibit 'AW2/13'. All these documents would show that entire service period of the workman is of Chandigarh in the office of Dainik Bhaskar. The workman neither joined nor performed any duty at Surat (Gujarat). Therefore, this Court is well within its territorial jurisdiction to try and decide the present claim.

30. Accordingly, this issue is decided against the management and in favour of the claimant-workman.

Issue No. 4 :

31. Onus to prove this issue is on management. During course of arguments this issue is not pressed by management.

32. Accordingly, this issue is decided against management and in favour of the claimant-workman.

Issue No. 5 :

33. Onus to prove this issue is on the management.

34. Learned Representative for management contended that the claim statement is time barred. A Civil Suit does not lie after the expiry of three years of the cause of action. In the present case, the demand notice / claim application filed by the workman before the Assistant Labour Commissioner, Chandigarh in June, 2018 for the benefit claimed by the claimant-workman for the year 2011 to 2018. On the other hand, Learned Representative for the workman argued that the workman is seeking his revised pay w.e.f. 01.11.2011, amount of interim relief and arrears of pay with interest @ 18% per annum as per the award given on the recommendations of Majithia Wage Board. On every passing month, the claimant was getting less salary than his due entitlement and on every month a fresh cause of action had arisen in favour of the workman. Whereas the reference to this Tribunal was made by the Secretary Labour, Chandigarh Administration on 03.08.2018. Thus, the claim of the workman is well within time in as much as the cause of action in the present case is reoccurring in nature.

35. As proved from the documents on judicial file, the workman raised the application demanding wages as per the Majithia Wage Board Award before the Labour Commissioner, U.T. Chandigarh on 25.06.2018 and the Worthy Secretary Labour, Chandigarh Administration under Section 17(2) of the Act 1955 referred to present dispute for adjudication to this Tribunal / Court vide reference dated 03.08.2018 bearing endorsement dated 06.08.2018. Moreover, the contention raised by Learned Representative for the workman carries force as denial of revision of pay and benefits of arrears of pay is a continuing cause giving rise to a recurring cause of action. Therefore, the bar of limitation does not apply.

36. Accordingly, this issue is decided against management and in favour of the workman.

Issue No. 6 :

37. Onus to prove this issue is on the management.

38. Learned Representative for the management argued that the present claim statement is not maintainable under Section 17 of the Act as no amount is due and the amount claimed is based on non-existing

right. To my opinion, the argument advanced by Learned Representative for the management is devoid of merits in view of Section 8 of the Act, which reads as below :-

"8. *Fixation or revision of rates of wages.-{1} The Central Government may, in the matter hereinafter provided.-*

(a) *fix rates of wages in respect of working journalists;*

(b) *revise, from time to time, at such intervals as it may think fit, the rates of wages fixed under this section or specified in the order made under section 6 of the Working Journalists (Fixation of Rates of Wages) Act, 1958 (29 of 1958).*

(2) *The rates of wages may be fixed or revised by the Central Government in respect of working journalists for time work and for piece work."*

39. In view of the aforesaid provision of the Act, the claimant-workman is entitled to the wages fixed under Majithia Wage Board recommendations. As far as the relief claimed under Section 17 of the Act is concerned, in the *judgment dated 27.03.2023 of Hon'ble High Court of Uttra Pradesh at Lucknow passed in Writ-C No.10419 of 2023 and Writ-C No.23212 of 2021(supra)*, which is applicable to the facts of the present case to an extent, it has been held in para 30as below :-

"30. *The argument of the counsel for the petitioner is that once the respondents have accepted the wages, emoluments and benefits as were existing by giving an undertaking, they are precluded from raising a claim under Section 17 of the Act, merits rejection for the sole reason that the Clause 20(j) of the Wage Board has to be read in context with the explanation under Clause 20(j) read with Section 13 and 16 of the Act."*

40. Accordingly, this issue is decided against the management and in favour of the claimant-workman.

Relief :

41. In the view of foregoing finding on the issues above, this reference is allowed and answered in favour of the workman to the effect that the workman is held entitled to the wages for the period from 11.11.2011 to 31.05.2018 as per the Majithia Wage Board recommendations after deduction of wages drawn by him during the said period. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 30.04.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 31st July, 2024

No.13/2/136-HII(2)-2024/12053.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **99/2020** dated **30.04.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BALA W/O ASHOK KUMAR R/O 2631, SECTOR 38W, DADU MAJRA, CHANDIGARH.
(Workman)

AND

A TO Z SERVICE THROUGH ITS PROPRIETOR ANIL KUMAR JAIN R/O B.O. JAIN
TOWER, SCO 20, 1ST FLOOR, ADJOINING UNITED BANK OF INDIA AMBALA-
CHANDIGARH HIGHWAY (ZIRAKPUR). (Management)

AWARD

1. Bala, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that petitioner (*here-in-after 'workman'*) was working as Sweeper since 9 years on contractual basis under the respondent-company (*here-in-after 'management'*). The salary of the workman was ₹ 10,587/- per month. The work & conduct of the workman was good and satisfactory during tenure of her service. The workman was working in Children Home named Snehalaya, VTC Maloya, Chandigarh. On 11.01.2016 workman was transferred to Senior Citizen Home, Sector 43-A, Chandigarh. While working in Senior Citizen Home, Sector 43-A, Chandigarh at Room No.7, the workman was molested by Old Age Resident number of times and also grabbed hand of the workman. Despite informing about it to RM Manager of Senior Citizen Home, Sector 43-A, Chandigarh no action was taken in favour of workman. RM Manager only asked the workman not to clean Room No.7. RM Manager of Senior Citizen Home, Sector 43-A, Chandigarh asked the workman to sign one application and informed her that the application is against the old age resident and ordered her to clean Room No.7 till the reply of above application. Taking advantage of the order, old age resident continued to do wrong with her. RM Manager used to give threat to terminate the workman from job and used to force her to do his personal work. RM Manager suddenly asked the workman to meet the management - contractor. The management-contractor told the workman that there is no post for her and asked to wait till the opening of new post. Moreover, the management-contractor offered the post on which the workman was working to his known person. Since, 24.06.2019 the workman was not working and sitting at home. Various other residents of the Senior Citizen Home at Sector 43-A, Chandigarh was fully satisfied with the work of the workman and on 03.07.2019 application was given by them to the Director Social Welfare Department, Chandigarh to reverse removal order of workman. The management-contractor had adopted unfair procedure to terminate the workman and also placed their known person on the post of the workman. Prayer is made that workman may be taken back in service with full back wages in the interest of justice, equity and law.

3. On notice, management contested the claim statement by filing written statement dated 05.08.2021 filed on 12.08.2021. The written statement has been filed by Shri Ankit Kumar Jain - Proprietor of M/s A to Z Services. In the written statement preliminary objections are raised on the grounds that the claimant (*here-in-after 'workman'*) has served the incomplete plaint (*here-in-after 'claim statement'*) as the Annexures / documents mentioned in the claim statement are not served by the workman. Hence, the management reserves its right to amend the written statement after receiving the complete claim statement with the permission of this Court. The instant claim statement is false, frivolous and devoid of any cause of action and it should be dismissed

in limine. The answering management is one of the leading reputed firm in India. The management is well known man service provider in the manpower service industry. The workman is guilty of misrepresentation, misstatements, concoctions and concealment of material facts. The claim statement is totally devoid of merits. The workman has deliberately failed and neglected to disclose true and correct facts and the claim statement contained misstatement, which is false to the knowledge of the workman. The workman has not approached this Court with clean hands and the claim statement has been filed as an afterthought to commit mischief in order to make the answering management succumb to the illegitimate demands of the workman otherwise legally unsustainable. The claim statement has been filed to harass, coerce, blackmail and pressurise the management with the aim that the management shall succumb to such illegal demands. The claim statement is without any cause and without any cause of action. The claim statement is entirely vexatious and is an attempt by the workman to harass the management. The claim statement is abuse of the process of law and the same is filed with intention to extort money from innocent persons. The workman cannot take benefit of her own wrong. Therefore, the claim statement is liable to be dismissed as the same is filed in collusion.

4. Further on merits, it is stated that it is matter of record that the workman was working as a Sweeper since 9 years on contractual basis under the management-company. It is denied that last salary drawn by the workman was `10,587/- per month. It is stated that the workman was appointed by the management on the basis of outsourcing in the establishment of the Social Welfare Department, Chandigarh. It is denied that the work & conduct of the workman was good and satisfactory. The principal employer / Chandigarh Child & Women Development Corporation Limited (CCWDC) informed that workman is in-disciplined and negligent person, usually found sleeping during the working hours and also, so many times shouted in the embellishments' persons. The above mentioned objections were sent by principal employer along with the written communication to the management and demanded the removal of the workman. The facts that the workman was working in Children Home named Snehalya, VTC Maloya, Chandigarh and on 11.01.2016 workman was transferred to Senior Citizen Home, Sector 43-A, Chandigarh are admitted being matter of record. With respect to the allegations of molestation and the communication between the workman and RM Manager of Senior Citizen Home, Sector 43-A, Chandigarh, it is stated that these relates to the principal employer that is CCWDC. The workman was relieved on the request of principal employer - CCWDC instead of the management because of urgent requirement of Male Sweeper instead of Female Sweeper. With respect to the facts that various other residents of Senior Citizen Home, Sector 43-A, Chandigarh were satisfied with the work of the workman and on 03.07.2019 they gave an application to Director Social Welfare Department, Chandigarh to reverse order of removal of the workman, it is replied that these facts are not concerned with the management contractor. It is further stated that management is reputed manpower outsourcing agent working for the entire satisfaction of the principal employer. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that claim statement may be dismissed with heavy cost.

5. The workman filed rejoinder to the written statement on 22.11.2021 wherein the contents of the written statement except admitted facts, are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 22.11.2021 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

7. In evidence, workman Bala examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with photocopy of letter addressed from various residents of Senior Citizen Home to the Director Social Welfare Department, Chandigarh requesting to reverse the removal order of the workman vide Mark 'A'. On 11.01.2024 the workman closed her evidence in affirmative.

8. On the other hand, management examined MW1 Ankit Kumar Jain - Proprietor, M/s A to Z Services, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'M1' to Exhibit 'M4'.

Exhibit 'M1' is letter bearing reference No.1427 dated 25.06.2019 issued by Company Secretary for Managing Director of Chandigarh Child & Women Development Corporation Ltd. to M/s A to Z Services, Badheri, Chandigarh relating to the subject of deputing of male sweeper in place on female sweeper in Senior Citizens' Home, Sector 43, Chandigarh.

Exhibit 'M2' is letter bearing reference No.4483 dated 17.12.2015 issued by Company Secretary for Managing Director of Chandigarh Child & Women Development Corporation Ltd. to M/s A to Z Services, Badheri, Chandigarh relating to the subject warning thereof - Drunk of Phenyl by Children.

Exhibit 'M3' is letter bearing reference No.AZS/16/22 dated 08.01.2016 addressed from Authorised Signatory for A to Z Services to the Superintendent, Children Home, Snehalaya VTC, Maloya, Chandigarh relating to the subject of transfer of sweepers of Smt. Bimla and Smt. Bala.

Exhibit 'M4' is letter bearing reference No.4740 dated 08.01.2016 addressed from Nishu Singhal, HCS, Managing Director, Chandigarh Child & Women Development Corporation Ltd. to M/s A to Z Services relating to the subject of transfer of sweepers of Smt. Bimla and Smt. Bala.

9. On 15.04.2024 Learned Representative for the management closed oral evidence. On 29.04.2024 Learned Representative for the management closed the documentary evidence.

10. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

11. Onus to prove this issue is on the workman.

12. Under this issue workman Bala examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 has supported her oral version with document Mark 'A'.

13. On the other hand, management examined MW1 Ankit Kumar Jain - Proprietor of A to Z Service who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement which not reproduced here to avoid repetition. MW1 supported his oral version with documents Exhibit 'M1' to Exhibit 'M4'.

14. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the workman was engaged as a Sweeper on contractual basis by M/s A to Z Services - contractor since 9 years back and was deployed to work with the Chandigarh Child & Women Development Corporation Limited at Children Home - Snehalaya VTC Maloya, Chandigarh. The workman has alleged that she was getting ₹10,587/- per month as wages whereas the management-contractor has denied that last drawn salary of the workman was ₹ 10,587/- per month. Though the management-contractor had denied the fact that the workman was getting ₹10,587/- as wages per month but the management-contractor being direct employer did not prove into evidence the wage register or wage slip or payment voucher of wages to contradict the workman's plea that she was getting ₹ 10,587/- as monthly wages. In the absence of record of wages, which the contractor employer is bound to maintain under the law, it cannot be disbelieved that the monthly wages of the workman were ₹ 10,587/- per month.

15. It is undeniable fact that from the date of appointment till 11.01.2016 workman remained deputed at Snehalaya VTC Maloya, Chandigarh. From letter dated 08.01.2016 / Exhibit 'M4' it is proved that Managing Director of Chandigarh Child & Women Development Corporation Limited directed the management-contractor M/s A to Z Services to transfer Smt. Bimla and workman Smt. Bala (Sweepers) from Children Home - Snehalaya to other unit of their corporation i.e. Senior Citizen Home, Sector 43, Chandigarh and Working Women Hostel, Sector 24, Chandigarh immediately. In pursuance of letter Exhibit 'M4', the management-contractor issued the transfer order vide letter dated 08.01.2016 / Exhibit 'M3' whereby the workman was transferred from Snehalaya VTC Maloya, Chandigarh to Senior Citizen Home, Sector 43, Chandigarh and three other workers were also transferred. Undisputedly, in compliance of the transfer order workman Bala joined duty at Senior Citizen Home, Sector 43, Chandigarh where she remained working till

termination of her service (services being terminated w.e.f. 24.06.2019). In this manner, the workman has remained in continuous employment of the management-contractor from last about 9 years up to 24.06.2019. The workman is proved to have completed continuous service of 240 days in 12 calendar months preceding termination of her services.

16. So far allegation of molestation levelled by the workman against the resident of Room No.7 of Senior Citizen Home, Sector 43-A, Chandigarh and the workman's plea that she reported the incident of molestation to RM Manager of Senior Citizen Home, Sector 43-A, Chandigarh is concerned, the alleged allegations does not relate to the management-contractor in any manner. The above said allegations would have been explained and answered by the then RM Manager of Senior Citizen Home, Sector 43-A, Chandigarh working under Chandigarh Child & Women Development Corporation Limited at Chandigarh / the principal employer but the workman has not impleaded the principal employer as party / management in the present claim statement. Moreover, the version of the workman that she was molested by old age resident number of times at Room No.7 of Senior Citizen Home, Sector 43-A, Chandigarh is not trust worthy as the workman has failed to prove that she reported the incident to the RM Manager of Senior Citizen Home, Sector 43-A, Chandigarh or that she reported the incident to the police or to her family members etc. The workman even did not disclose the name of the person who allegedly molested her. When put to cross-examination workman / AW1 stated that she cannot tell the name of said old age resident. The version of MW1 in her cross-examination that she had given information of her molestation to the Manager namely Mr. Dinesh Dixit of Old Age Home and that she has also given information of the said incident to A to Z Services does not stand proved for the reason that the workman has not mentioned the specific date and time of the occurrence, the workman did not examine any witness to corroborate her version, the workman did not report the matter to the police despite having opportunity to inform the police and there is no written intimation either to RM Manager of Old Age Home or to the management-contractor. Moreover, it is not plea of the workman in her claim statement or affidavit Exhibit 'AW1/A' that she ever reported the alleged incident of molestation to management-contractor. Rather workman / AW1 has set up a new story in her cross-examination that similar incident had occurred with 4-5 ladies of her age group, who were working at Senior Citizen Home.

17. From letter dated 17.12.2015 / Exhibit 'M2' it is revealed that the Managing Director of CCWDC informed the management-contractor that two girls residents of Snehalya namely Ms. Rakhi D/o Late Shri Jagpal Singh and Ms. Reena D/o Shri Rangaram drunk the phenyl on 06.12.2015 and during the course of inquiry it was revealed that this incident had happened due to sheer negligence of Sweepers namely Smt. Bimla and Smt. Bala, who were present on duty at that time and vide this letter the management-contractor was directed to issue strict warning to both the Sweepers to keep the phenyl etc. in lock & key in future. From letter dated 25.06.2019 / Exhibit 'M1' it is revealed that the Managing Director of CCWDC intimated the management-contractor that two female Sweepers are provided by the contractor in Senior Citizens Homes, Sector 43, Chandigarh and due to urgent requirement of male Sweeper the contractor was directed to provide 1 Male Sweeper in place of 1 Female Sweeper on the same eligibility criteria and remuneration for Senior Citizens Home, Sector 43, Chandigarh immediately. Learned Representative for the management argued that the workman was relieved from service on the request of the principal employer vide letter dated 25.06.2019 / Exhibit 'M1' and moreover, the work & conduct of the workman was not satisfactory as per the intimation given by the Managing Director of CCWDC vide letter dated 17.12.2015 / Exhibit 'M2'. On the other hand, it is argued by Learned Representative for the workman that the services of the workman were terminated by relieving her from service without following the conditions laid down in Section 25F of the ID Act. It is further argued by Learned Representative for the management that the workman was never issued any charge sheet or no inquiry was conducted on the alleged allegation of misconduct. Before terminating the services of the workman, she was neither issued one month's prior notice nor paid notice pay in lieu of notice period nor any retrenchment compensation was paid to her at the time of termination of her services. To my opinion, the workman has completed continuous period of service as required under Section 25B of the ID Act, therefore, provisions of Section 25F is attracted, which lays down the conditions that are required to be fulfilled by an employer while terminating the services of an employee. Section 25F imposes prohibition against retrenchment until the conditions prescribed by that Section are fulfilled. In the present case, the employer i.e. management-

contractor neither pleaded nor proved into evidence that before terminating the services of the workman, the conditions laid down under Section 25F of the ID Act were complied with. It is also not case of the management-contractor that the workman was offered any alternative job on same terms & conditions. If for the sake of arguments, it is assumed that the department of CCWDC had issued letters Exhibit 'M1' and Exhibit 'M2' as the work & conduct of the workman was not satisfactory, in that situation also the management was required to initiate disciplinary proceedings against the workman for the alleged misconduct. In the present case, it is neither pleaded nor proved by the management that the workman was ever issued any show cause notice or any domestic inquiry was conducted against her. It is also not case of the management-contractor that the workman was ever issued any warning letter to improve her work & conduct.

18. Learned Representative for the management argued that the workman is not entitled to reinstatement with back wages as she is earning handsome amount of ₹ 7000 to ₹ 8000/- per month by doing private job. To support his arguments Learned Representative for the management referred cross-examination of AW1 wherein she has stated that she was terminated on 24.06.2018. She does not remember the exact date but she was terminated about 4-5 years ago. AW1 further stated that from the date of her termination till date she is doing work of domestic help privately and earn about ₹ 7000/- to ₹ 8000/- per month from this work. To my opinion, by making reference to the aforesaid version of AW1, the management has taken the plea that the workman is gainfully employed. The plea of gainful employment taken by the management during cross-examination of AW1 is beyond pleadings. So far gainful employment is concerned, any income arising independent of any employment cannot be computed while deciding the issue of gainful employment. In the present case, the management has failed to prove adequate remuneration out of employment received by the workman during the interregnum period as the last paid wages of the workman were ₹ 10,587/- per month and the workman by doing the private work of domestic help is able to earn only ₹ 7000/- to ₹ 8,000/- per month. Any other amount received or earned by the workman by using his / her personal skill or experience or doing the labour work and miscellaneous work cannot be considered to be the gainful employment. It is not the case of the management that the workman is employed in any establishment during such period and is receiving adequate remuneration during any such period and the part thereof. Consequently, the management has failed to prove that the workman is gainfully employed.

19. In view of the discussion made above, the verbal order of termination of services of the workman by relieving her w.e.f. 24.06.2019, is illegal being violative to Section 25F of the ID Act and hereby set aside. In the absence of evidence that the management-contractor is having a valid contract with any organisation and keeping in view length of service of the workman with the management, the workman is held entitled to lump sum compensation in the sum of ₹ 60,000/-.

20. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

21. In the view of foregoing finding on the issues above, the present industrial dispute is allowed. The workman is held entitled to lump sum compensation in the sum of ₹ 60,000/-. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the above-said amount from the date of this award till its realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 30.04.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 31st July, 2024

No. 13/2/138-HII(2)-2024/12055.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **8/2021** dated **01.05.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

JAYA, H.NO. 287, RAM DARBAR COLONY, PHASE - II, CHANDIGARH. (Workman)

AND

M/S ASHISH INDUSTRIES, PLOT NO.597, INDUSTRIAL AREA, PHASE - II, CHANDIGARH
THROUGH ITS PROPRIETOR. (Management)**AWARD**

1. Jaya, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that workman was appointed by the management as Helper in the month of July 2012. The workman remained in uninterrupted employment up to 10.07.2020 when her services were illegally and wrongfully terminated by refusing of work. The workman was drawing ₹10,000/- per month as wages at the time of termination. Initially the factory was running at plot No.181/16 and workman was appointed there. Later on the factory was shifted to Mohali and from the last about 5 years the factory is running from Plot No.597, Industrial Area, Phase - II, Chandigarh. The workman remained in continuous employment from the date of appointment till the date of termination. The workman was covered under the ESI scheme and was allotted ESI No.1713651348. The date of registration in ESI card is mentioned as 21.09.2019. On 11.07.2020 the workman when to attend her normal duty but she was refused work by the management without assigning any reason and notice. Refusal of work which amounts to termination is retrenchment under Section 2(o) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. For her reinstatement the workman served upon the management a demand notice dated 20.08.2020. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the dispute could not be settled within the stipulated period. The management did not appear before the Conciliation Officer on the last date for settlement. The action of the management is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The workman remained un-employed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with full back wages along with continuity of service and full attendant benefits without any change in her service condition.

3. On notice, management contested the claim statement by filing written statement dated 14.10.2022 (filed on 21.11.2022), wherein preliminary objections are taken on the ground that the claim statement is not maintainable. The claimant (*here-in-after workman*) has not stated under which Section and under which Act the alleged statement of claim is filed. The workman has no locus standi and cause of action. The claim statement is barred by own act & conduct of the workman. The claim statement is an abuse of the process of law. The claim statement is misleading and misconceived. The claim statement is false, frivolous, vexatious and ulterior motivated, filed with malafide intention to extort money from the management. The workman has suppressed the true and material facts of abstaining from her duties in an un-authorised manner. The management has never terminated the services of the workman as alleged or by issuing any letter of termination. The management has advised the workman through its various communications to report for her

duties and not to indulge in unfair labour practice. The management reserves its right to take appropriate disciplinary action for abstaining from her duties and for filing false, fabricated and vexatious claim. The services of the workman have never been terminated by the management. Therefore, the present claim statement does not constitute an industrial dispute under the ID Act. The workman may be put to strict proof of having terminated her services by the management.

4. Further in para-wise reply, it is stated that since there is no retrenchment, therefore, the so called Section does not apply to the management. Moreover, the workman has admitted that it is retrenchment and therefore, the appropriate authority is the Labour Commissioner (Central) for deciding the matter of retrenchment i.e. whether it is legal or illegal. There is no termination of the workman so the question of charge sheet and inquiry does not arise. The answering management did not violate any provision of Section 25F of the ID Act. The workman has left the services of her own accord as such, no direction is required to be issued by this Tribunal. Further similar stand is taken as taken in the preliminary objections. Rest of the contents of the claim statement are denied as wrong and prayer is made that claim statement may be dismissed.

5. The workman filed rejoinder wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 24.01.2023 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits, as prayed for ? OPW
3. Whether the claimant / workman has no locus standi and cause of action ? OPM
4. Whether the workman has concealed the material facts from the Court ? OPM
5. Whether the claim statement is not maintainable ? OPM
6. Relief.

7. In evidence workman Jaya examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A'. On 23.11.2023 workman closed her evidence in affirmative. It is pertinent to mention here that during cross-examination of MW1 the workman has put certificate dated 27.05.2017 issued by Ashish Industries to MW1 vide Exhibit 'W1' on which MW1 admitted his signatures at point 'A'.

8. On the other hand, management examined MW1 Ashish - Proprietor of Ashish Industries, Plot No.597, Industrial Area, Phase - II, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'. Learned Representative for the management closed oral evidence on 19.03.2024 and closed the documentary evidence on 30.04.2024.

9. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issues No.1 & 2 :

10. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

11. Onus to prove both these issues is on the workman.

12. Under these issues workman examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity.

13. On the other hand, management examined MW1 Ashish - Proprietor of Ashish Industries, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement which are not produced here to avoid repetition.

14. From the oral as well as documentary evidence led by the parties and pleadings, it emerges that M/s Ashish Industries is at present situated and running from plot No.597, Industrial Area, Phase - II, Chandigarh as the same address of the management industry is mentioned by MW1 when he examined himself in the witness box being Proprietor of M/s Ashish Industries. At the time of examining himself MW1 Ashish mentioned that he is aged about 37 years S/o Dev Raj Bansal, Proprietor of Ashish Industries, Plot No.597, Industrial Area, Phase - II, Chandigarh. From this the denial of suggestion by MW1 that management factory was shifted to plot No.597, Industrial Area, Phase - II, Chandigarh stands falsified. Learned Representative for the workman contended that initially the factory was running at plot No.181/16 and the workman was appointed there and later on the said factory was shifted to Mohali and from last about five years the factory is running from Plot No.597, Industrial Area, Phase - II, Chandigarh. MW1 in his cross-examination admitted as correct that initially the factory was running at Plot No.181/61, Industrial Area, Phase - I, Chandigarh. MW1 denied the suggestion as wrong that factory was shifted to Mohali and voluntarily stated that new factory was installed at Mohali with the name Ashish Industries, which is a partnership concern. The version of MW1 that new factory under the name of Ashish Industries was started at Mohali does not stand prove as MW1 did not place on record any document of registration of new factory. MW1 in his cross-examination stated that his factory / management factory is not registered under the Factory Act. Again said, he can consult with his Accountant and then tell about the registration. He has no knowledge about registration of factory under the Factory Act. He does not know if the factory is registered under the Punjab Shops & Commercial Establishments Act or not. Further cross-examination of MW1 was deferred for producing the record of registration of factory under The Factories Act or Punjab Shops & Commercial Establishments Act, if any. MW1 when re-called for remaining cross-examination stated that there is no record of registration under the Factory Act and Punjab Shops & Commercial Establishments Act as the same is not registered. To my opinion, since MW1 is Proprietor of Ashish Industries, who has failed to bring into evidence the record of registration of his factory, therefore, there is no reason to believe that factory running at Mohali with the identical name M/s Ashish Industries was different from the management factory. Moreover, two separate factories cannot run or operate with the identical name & style.

15. Learned Representative for the workman argued that the workman was appointed as Helper in the month of July, 2012 by the management factory and workman remained in continuous employment of the management up to 10.07.2020 when her services were terminated by the management by refusing work. On the other hand, Learned Representative for the management argued that in the written statement and evidence of MW1, the management has specifically denied the date, month and year of appointment as alleged by the workman. Learned Representative for the management further argued that the workman has not proved into evidence the appointment letter. To support his arguments Learned Representative for the management referred cross-examination of AW1 wherein she has stated that no appointment letter was issued to her by the management. Learned Representative for the management referred cross-examination of AW1 wherein she has further stated that she did not place on record any document showing her service with the management. To my opinion, the plea taken by the management in the written statement that workman left the services of her own accord would pre-suppose that the workman was in the employment of management industry. Moreover, MW1 in his cross-examination admitted as correct that factory is covered under ESI scheme. MW1 admitted as correct that ESI department has issued insured No.1713651348 to the workman. Above all MW1 identified his signatures at point 'A' of certificate dated 27.05.2017, copy of which is Exhibit 'W1'. The perusal of Exhibit 'W1' would show that Proprietor of M/s Ashish Industries, Plot No.597, Industrial Area, Phase - II, Chandigarh - 160002, under his seal and signatures had issued certificate dated 27.05.2017, wherein it is certified that Mrs. Jaya is working in M/s Ashish Industries, Plot No.597, Industrial Area, Phase - II, Chandigarh from last five years and she is drawing monthly salary of ₹ 10,000/- and she is presently residing in House No.1031, Phase - II, Ram Darbar, Chandigarh. The contents of certificate Exhibit 'W1' would not only prove that the workman is in employment of M/s Ashish Industries from the last five years of issuance of certificate i.e. year 2012 (certificate being issued on 27.05.2017) but it would also prove that the workman was getting monthly wages of ₹10,000/-. It is the management-employer, who is legally bound to maintain the service record of its employees. In the present case, the management did not produce into evidence the service record or appointment letter of the workman to contradict the workman's

plea that she joined service as Helper with the management in July 2012 and remained in its continuous employment up to 10.07.2020.

16. Learned Representative for the management contended that the workman has not placed on record the termination letter because in fact the services of the workman were never terminated and workman herself left the job. To support his contention Learned Representative for the management referred cross-examination of AW1 wherein she has stated that no letter of termination was issued to her. To my opinion, the aforesaid contention raised by Learned Representative for the management is devoid of merits because the workman has specifically alleged that she was refused work by the management without assigning any reason or notice. Thus, the workman's plea is that her services were terminated by verbal order and not by issuing any letter of termination in writing. So far as the plea taken by the management that the workman left the services of her own accord is concerned, in that situation the management was legally bound to issue written notice to the workman requiring her to join back duty and in case the workman despite receipt of such notice failed to rejoin her service, then management must take disciplinary action against the workman. In the present case, MW1 when put to cross-examination stated that no letters were issued to the workman requiring her to re-join duty. The volunteer statement of MW1 that messages were conveyed to the workman through someone is without any basis and vague, thus, not acceptable. All these facts & circumstances would prove that the management did not issue any letter or never communicated to the workman requiring her to rejoin duty.

17. So far as continuous period of service is concerned, as proved from Exhibit 'W1', the workman is proved to be in continuous service of the management since the year 2012. Besides, MW1 in his cross-examination stated that he cannot say if the management has deposited the ESI contribution relating to the workman continuously for the period July 2012 to July 2020. The fact being not specifically denied by workman is deemed to be admitted under the law. MW1 in his cross-examination admitted as correct that the workman had filed a case claiming Bonus against the management. In that case, he had received the notice issued by the Controlling Authority and appeared in the proceedings of said case. MW1 admitted as correct that the workman has filed a case under the Bonus Act, which was allowed ex-parte in favour of the workman and against the management. The aforesaid version of MW1 would prove that the workman remained in continuous employment of the management from July 2012 to July 2020. Consequently, the workman is proved to have completed continuous service of 240 days in 12 calendar months preceding the date of termination (services terminated with verbal order on 10.07.2020). Thus, the workman fulfils the requirement of Section 25B of the ID Act. Once the requirement of Section 25B is fulfilled then the provisions of Section 25F is attracted. Section 25F of the ID Act is extracted herein below :-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

18. In the present case, the management has failed to prove the compliance of conditions laid down under Section 25F of the ID Act, before terminating the services of the workman with the verbal order on 10.07.2020. In this regard, MW1 when put to cross-examination stated that no charge sheet was issued to the workman. No retrenchment compensation was paid to the workman. He is not ready to reinstate the workman with continuity of service and full back wages. MW1 voluntarily stated that workman can be engaged only if

there is any requirement of work. The aforesaid version of MW1 would not only prove the violation of Section 25F of the ID Act but would also prove the un-willingness of the Proprietor of management factory not to take the workman back on duty. Consequently, the management's plea that workman left the job of her own accord stands falsified.

19. In view of the discussion made above, the verbal order of termination of services w.e.f. 10.07.2020 being in violation to Section 25F of the ID Act is illegal and hereby set aside. The management has failed to controvert the plea of the workman that from the date of termination till date she remained un-employed. Therefore, the workman is entitled to reinstatement with continuity of service along with 75% back wages and all consequential benefits.

20. Accordingly, both these issues are proved in favour of the workman and against the management.

Issues No. 3 to 5 :

21. All these issues are taken up together being interconnected and in order to avoid repetition of discussion.

22. Onus to prove all these issues is on the management.

23. The workman on being aggrieved from the management's act of illegal termination of her services was left with no other option than to raise an industrial dispute and to present industrial dispute reference. Thus, the workman has a valid cause of action and locus standi. Learned Representative for the management has failed to prove the concealment of any material fact by the workman. The present claim statement is being filed with a valid cause of action and locus standi well within the territorial jurisdiction of the present Tribunal / Court after raising the demand notice and on failure of the conciliation proceedings before the Assistant Labour Commissioner-cum- Conciliation Officer, U.T. Chandigarh, who vide failure report bearing Memo No.4653 dated 31.12.2020 advised the workman to approach the appropriate forum for the adjudication of her dispute. Thus, I do not find any defect so far maintainability of the present industrial dispute reference / claim statement is concerned.

24. Accordingly, all these issues are decided against the management and in favour of the workman.

Relief :

25. In the view of foregoing finding on the issues above, the present industrial dispute is allowed. The workman is held entitled to reinstatement with continuity of service along with 75% back wages and all consequential benefits. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 01.05.2024.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Anish Sharma, S/o Late Sh. Om Parkash Sharma, R/o # 3402/1, Sector 47-D, Chandigarh, have changed my name to Anish Kumar Sharma.

[1082-1]

I, Nano Qureshi, D/o MD Umar, H. No. 1305, Burail, Chandigarh, have changed my name from Nano Qureshi to Sahiba Qureshi.

[1083-1]

I, Fejuddin, S/o Aminuddin, # 1719, Mauli Jagran Complex, Chandigarh, have changed the name of my minor daughter from Aliya Parveen to Aliya.

[1084-1]

I, Sumit Verma, S/o Amarjit Verma, R/o # 129, Badheri, Chandigarh, have changed the name of my minor daughter from Akshra Verma to Akshara Verma.

[1085-1]

I, Raj Kumar, S/o Kedar Singh, # 606, Hallo Majra, Chandigarh, have changed my name to Raj Kumar Singh.

[1086-1]

I, Khalil, S/o Mazid, # 917, Gugga Maadi, Sector 45, Burail, Chandigarh, have changed my name to Khalil Ahmad.

[1087-1]

I, Rekha Devi, W/o Rajinder Kumar, # 446, Sector 33-A, Chandigarh, have changed my name to Rekha.

[1088-1]

I, Braj Mohan Rai, S/o Sh. Nand Lal Rai, R/o House No. 124, Ph-1, Bapu Dham Colony, Sector 26, Chandigarh. Declare that I have amended my name Braj Mohan Rai instead of Braj Mohan Roy. Braj Mohan Rai and Braj Mohan Roy is one and same person.

[1089-1]

I, V.K. Grover, S/o Sham Lal Grover, R/o House No. 3520, Sector 38-D, Chandigarh, have changed my name to Vijay Kumar Grover.

[1090-1]

I, Rachna Devi, W/o Raj Kumar Singh, # 606, Hallo Majra, Chandigarh, have changed my name to Rachana Kumari.

[1091-1]

I, Shish Pal Kaushal, S/o Gian Singh, # 252, Maloya, Chandigarh, have changed my name to Shish Pal.

[1092-1]

I, Gulshan *Alias* Gulshan Kumar *Alias* Gulshan Kalra, S/o Dharamvir, R/o # 545, Sector 40-A, Chandigarh, have changed my name to Gulshan Kumar Kalra.

[1093-1]

I, Ramesh, S/o Haripal Singh, R/o # 379, Village Maloya, Chandigarh, have changed my name to Harmesh Kumar.

[1094-1]

I, Rohit Swa Swain, S/o Manguli Swain, # 2, Village Hallo Majra, Chandigarh, have changed my name Rohit Swain.

[1095-1]

I, Pramod Chand Sharma, S/o Brij Lal Sharma, # 297/B, Sector 51-A, Chandigarh, have changed my name to Pramod Chand.

[1096-1]

I, Balwinder, S/o Prem Chand, R/o House No. 2951, Dadumajra Colony, Sector 38-West, Chandigarh, have changed my name from Balwinder to Balwinder Singh.

[1097-1]

I, Rakesh, S/o Naurangi Lal, R/o # 646/B, Small Flats, Dhanas, Chandigarh, declare that I have changed my name from Rakesh to Rakesh Kumar.

[1098-1]

I, Sonu, S/o Devanand, R/o # 1989/B, Small Flats, Dhanas, Chandigarh, declare that I have changed my name from Sonu to Sonu Kumar.

[1099-1]

I, Rakesh, S/o Mohender, R/o # 1937/B, Small Flats, Dhanas, Chandigarh, declare that I have changed my name from Rakesh to Rakesh Rajput.

[1100-1]

I, Sahil, S/o Baljinder Singh, R/o # 705/15, Sector 26, BDC, Chandigarh, declare that I have changed my name from Sahil to Sahil Bidla.

[1101-1]

I, Shohit, S/o Hari Lal, R/o # 255, Phase-2, Sector 26, BDC, Chandigarh, declare that I have changed my name from Shohit to Shohit Gautam.

[1102-1]

I, Pushpak Verma, S/o Sumit Verma, R/o # 129, Badheri, Chandigarh, have changed my name from Pushpak Verma to Pushkar Verma.

[1103-1]

I, Anil Kumar, S/o Jia Lal, # 2163, Sector 19-C, Chandigarh, have changed my name to Anil Kumar Kamboj.

[1104-1]

I, Anju, W/o Anil Kumar Kamboj, # 2163, Sector 19-C, Chandigarh, have changed my name to Anju Kamboj.

[1105-1]

I, Raj Kishor Sharma, S/o Kamta Parsad, R/o # 1596-B, Small Flats, Dhanas, Chandigarh. I have changed my name from Raj Kishor Sharma to Raj Kishor.

[1106-1]

I, Tajinder Pal Singh, S/o Ajit Singh Bhatia, R/o # 3361, Sector 23-D, Chandigarh, have changed my name to Tajinder Pal Singh Bhatia.

[1107-1]

I, Vinitha, W/o Hara Kanta Nath, R/o H. No. 222, Sector 11-A, Chandigarh, have changed my name from Vinitha to Binita Nath.

[1108-1]

मैं, एच.के. नाथ, पुत्र श्री करीमोहन नाथ, निवासी # 222, सेक्टर 11-ए, चंडीगढ़, ने अपना नाम एच.के. नाथ से बदलकर हारा कांता नाथ रख लिया है।

[1109-1]

I, Chitrangada, W/o Sunil Dutt, R/o # 1624 A, Sector 29-B, Chandigarh, have changed my name to Chitra.

[1110-1]

I, Ritu Bala, wife of Ranbir Singh, D/o Sh. Kewal Chand, R/o House No. 2325, Sector 35-C, Chandigarh, have changed my name from Ritu Bala to Ritu Saini.

[1111-1]

I, Narender Kumar, S/o Nakhmi Chand, R/o # 5487/1, MHC (Sector-13), Manimajra, U.T. Chandigarh, have changed my name to Narender Gulati.

[1112-1]

I, Amit Ghai, S/o Y.P. Ghai, R/o H. No. 1055, Sector 8-C, Chandigarh, have changed my minor daughter's name from Shagun Ghai to Mili Ghai.

[1113-1]

I, Jaya Mehra, W/o Shri Anshuman Maini, R/o # 3046, First Floor, Sector 44-D, Chandigarh, have changed my name from Jaya Mehra to Jaya Maini.

[1114-1]

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